The First and Second Part.

BEING METHODICAL COLLECTIONS, under certain Grounds and Heads, of what words are actionable in the Law, and what not.

A Treatise of very great use and consequence to all men; especially in these times, wherein Actions for Slander are more common, and do much more abound than in times past: And when the malice of men so much increases, well may their tongues want a Directory.

To which is added,

AWARDS, or ARBITREMENTS.

Methodized under severall Grounds and Heads, collected out of our Year-books, and other private authentick Authorities, wherein is principally shewed, what Arbitrements are good in Law, and what not.

A learning of no less use and consequence to all men, than the former; for that Submissions to Arbitrements were never more in use than in these times. And this learning wel observed, would avoid multitudes of suits and contentions which dayly arise through the defects of Arbitrements.

Whereunto is added an exact Table.

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A true and exact Table to the Actions for Slander, by which you may easily find all things contained in it, Composed by the Author,

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Action

Actions for Slander:

OR,

A Methodicall Collection, under certain Grounds and Heads, of what words are Actionable, and what not.

THE first part of my labour is to shew what words are actionable in the Law, and what not: In the prosecution of which it is not my purpose to run over all the Cases that have been adjudged, neither can I, if I would; my intent is onely to lay down a certain rule or ground, upon which to go, (which will indeed be as a light to all Cases of this nature) and having done so, to follow every particular thereof, with the most pertinent cases that I finde adjudged in the Law; which done, there

will be very few cases of consequence hi-therto adjudged omitted.

But before I enter upon this part of my labour, give me leave to premise this that I do not undertake this work, with an intent to encourage men in giving ill and unworthy language, or to teach them a lawless Dyalect, but (as my Lord *Cooke* speakes) to direct and in-struct them rightly to manage tha which (though but a little member proves often the greatest good, or th greatest evil to most men. And witha to deterre men from words, which ar but winde (as hee further speakes which subject men to actions, in whic dammages and costs are to bee recov-red, which usually trench to the gre-hinderance and impoverishment of th speakers.

Cook l. 4. fol. 20. b.

And in truth that which caused me to enter upon this labour, was the fre-quency of these actions, for I may wit confidence affirm, that they doe at th day bring as much Gryse to the Mill, not more, than any one Branch of th Law, whatsoever. And it were to be wished (and certainly never in a bette time than now) that the greatest part o

them were ſuppreſſed, that words only of brangle, heat and choler, might not be ſo much as mentioned in thoſe high and honourable Courts of Juſtice. For I profeſs for my part, I judge of them as a great diſhonour to the Law, and the profeſſors thereof; eſpecially when I conſider that they are uſed only as inſtruments to promote the malice, and vent the ſpleen of privare jarres and diſcontents amongſt men.

The Apoſtle calling in queſtion the wiſdome of men, *for going to Law one with another*, is not to bee intended (as the learned obſerve upon that place) generally to condemne all legall proſecutions, becauſe a man may without queſtion maintain his juſt rights and priviledges by Law, but only to reprehend the folly of ſuch who upon every slight and triviall occaſion (like many in theſe contentious times) care not to intayle a ſuit upon them and their poſterity; though in Fine they dock their owne intayles without recovery: and juſtly may actions for words come within the compaſs of the Apoſtles exprobration. 1 Cor. 6. 5.

I do not condemne all actions for

words neither, for it is but equall, that where a mans life, livelihood, or reputation (which is dearer to him than the former) is much endangered by scandalous words, that in such case the offender should be inforced by action to make composition; But that a man should flee to the Law out of malice, and make the Courts of Justice maintainers of every small and vain brabble, this seems to me utterly unlawfull and intollerable amongst Christians.

I cannot but take notice of that which *Wray, chief Justice* saith in *Cookes* 4th Book. That though slanders and false reputations are to be repressed because that often times *a verbis ad verbera perventum est*; which I confess tends much to the disturbance of the common peace and therefore by all means possible to bee prevented. Yea he saith, that the Judges have resolved, that actions for scandalls should not be maintained by any strained construction or argument nor any favour extended for supportation of them. And he adds the reason of it, because they do abound more in these dayes than in times past. and the intemperance and malice of men in

Cook. lib. 1. f. 15.

creas-

creaſes: *Et malitiis hominum eſt obviandum*; and further adds, that in our old Books, actions for ſcandalls are very rare and ſuch as are brought, are for words of eminent ſlander, and of great importance.

Tis true that the Law doth in ſome caſes diſcountenance theſe actions, and therefore we have a rule, that words if they admit of a double conſtruction, ſhall alwaies be taken in the beſt ſenſe for him that ſpeakes them (as I ſhall make evident hereafter) becauſe uſually they are ſpoken in chollar and paſſion.

This I ſay the Law doth, where the words are amphibolous; but if the words are clearly actionable, in ſuch caſe the Law will never aid a man, though they were ſpoken in the diſtemper of paſſion which ſeemeth very hard and unreaſonable.

Nay which is yet more extream, if Council ſhall but inform the Jury of the quality and reputation of the Plaintiff, and alſo make them underſtand if they be capible the true ſenſe and meaning of the words, and the hainouſneſs of them; ſuch words, againſt ſuch a per-

ſon; this inforced and preſt on by eminent Councell, ſhall make a Iury give a hundred Pounds dammages, whereas it doth not appeare to them, that the Plaintiffe by the ſpeaking of the words was prejudiced one farthing, a caſe of very great extremity, and worthy of reliefe.

And can any man deny, but that this is a countenancing of theſe frivilous Actions. But give me leave Reader, and I will in a word informe you how this may be remedied: and though the malice of men cannot be ſtopped, yet their Actions may.

Let no words be actionable which do appear to have been ſpoken in choller and paſſion, or if actionable, yet let the plaintiffe recover no more in damage, then he can upon Oath make appeare, that he was actually damnified by the ſpeaking of them; and if this were provided by Act in Parliament, our new books would bee as little infeſted with theſe frivolus actions, as the old ones are. But I cannot thus baulke that obſervation of that learned Chiefe Iuſtice who ſaies, that in our oldbookes Actions for ſcandals are very rare, and ſuch as

are

are brought, are for words of eminent ſlanders, and of great importance.

This muſt needs be acknowledged to be a moſt exact and true obſervation, for in ſearching of the Books, I cannot finde that any action for ſcandalous words was brought before *E.* 3: time, and ſo rare then, that I finde but one in fifty years of *E.* 3. and that in Sir *Thomas Setons* caſe of Juſtice, for calling of him *Trayter*, *Felon*, and *Robber*; no frivolous cauſe of action. 30. Aſſ. fo. 19.

And I finde but three Actions for words brought in 22. years of *E.* 4. and theſe for one and the ſame words, for publiſhing one to be the *Pilleine* of *I.S.* a ſlander of no ſmall importance neither; for ſo long as that baſe and ſlaviſh Tenure of *Pilleinage* held, hee that was a *Pilleine*, was ſubject both in perſon and eſtate to the will of his Lord, ſo that he might ſeize all his eſtate real and perſonal, and vaſſallize his perſon at his pleaſure, ſo that hee did not kill or maym him. 2 E. 4. 5. 15 E. 4. 32. & 4. 3.

In all the one and twenty years of *H.* 7. there is not one action that I can finde, brought for ſcandalous words.

And in 38. years of *H.* 8. our Books

tell us but of five actions brought for
scandalous words; two thereof were
27 H. 8. 14. & 22. in 27. H. 8. so that I finde none before
30 H. 8. that time neither. The other were in 30
br. action upon the case 104. H. 8: and 28: H. *Dyer*, And these for
28 H. 8. no trifling words, for you shall finde
Du. fo. 19. that one of them was for calling a man
fo. 112. & *Heretike*, another for saying a man was
f. 26. fo. perjured; and the other three for call-
171. ling of one Thiefe, all of which are high
scandalls to a mans reputation, and most
of them tounding to the loss of life and
fortunes; so that it is very true, that
that Reverend Chiefe Justice observed,
that these Actions were very rare in our
old bookes, and such as were brought
were for words of emminent slander, and
of great importance.

But these few have now got such a
numerous progeny that I feare we can-
not turn over many leaves in our new
bookes, but we shall finde one of these
Actions. They began thus to multiply
in the *Queens* time, as we find in my
Lord *Coxes* 4. Book, where there is no
less then 17. adjudged cases together
upon these Actions.

And you may easily judge, they did
not abate in King *James* his time; for
(if

(if I mistake not) there is no less then two and twenty adjudged cases upon these actions in my LORD *Hobarts* Book.

And I am certain they are not fallen in his Majesties Reign that now is; for I my selfe have reported no less then three and twenty judgments upon these actions, but from *Easter* Terme in the sixteenth year of the King, to *Trinity* Terme in the eighteenth. Psal. 39. 1, 2.

Well therefore might *Wray*, *Chief Justice*, say that the malice of men doth more increase in these times, then in times past; and he saith, the malice of men ought to be withstood as much as may be; which I am sure the too frequent tollerating of Actions of this nature will not effect, no more than fire can be extinguished by adding fewell unto it. You have heard my advise and direction before, therefore I will here close this with one word, though the tongues of men be set on fire, I know no reason wherefore the Law should be used as Bellowes to blow the Coles

It is the saying of the Prophet *David, I will take heed to my ways that I offend not with my tongue, I will keepe my mouth*

mouth as it were with a bridle. It were happy for all men if they could make the like resolution and keep it. But seeing that we are but men, whileſt we carry this lump of fleſh, and maſs of corruption about us, wee ſhal bee ſubject to the like paſſions and affections that others have been before us, and the fleſh will rebel againſt the ſpirit, And therefore I have provided this Treatiſe upon Actions of Slander, as a Bridle for all raſh and inconſiderate tongues, that ſeeing the miſchief they may the better know how to avoid it.

And here I ſhal lay down this as a general rule, which I ſhal by the way as I go, make good in every particuler.

That all ſcandalous words which touch or concern a man in his life, Liberty, or, Member, or any corporall puniſhment; or which ſcandall a man in his Office or place of Truſt, or in his Calling or function by which he gaines his living; or which tend to the ſlandering of his Title, or his diſinheritance; or to the loſs of his advancement, or preferment, or any other particular damage; or laſtly which charge a man to have any dangerous infectious diſeaſe;

by

by Reason of which he ought to seperate himself, or to be seperated by the Law from the society of men: all such Wordes are Actionable.

And first for the first part of this Rule viz. *Scandalous Wordes which touch or concerne a man in his life; such Words are Actionable.*

If a man call another Traitor, Felon, Theefe or Murderer, an action lies for these words, because they call a mans life in question. 30 Ass.fol. 19.27 H.8 14.& 21. Cook l. 4. fol.16.b.

So it is all one if one shall say of another that he killed or murdered I. S. or that he stole his goods, or that he poysoned him, if it appear to be intended to be wittingly done, or the like, these words likewise are Actionable, as appears by the Books in the margent. Dyer, fol. 26.f.171. and 236. fol.26.: Hob.Rep. f.8. Pl.11. and 247. pl.196. Cook lib. 4.f.20.

So if one shall say of another he hath burnt my Barn with Corn, which is Felony, this likewise will beare an Action.

I have a report of a case in which was thus: a Servant of one Mr. *Roger Brook* said of one Mrs. *Margaret Passey* that she sent a Letter to his Master, and in the said letter willed his Master to poyson his Wife *Bridget Brook*, and in this case

case it is said that upon a Writ of Error brought in the Chequer Chamber it was resolved, the words were actionable, and the judgements affirmed, which case I confess I much doubt, because here was but bare advice and nothing appearing to be done like *Eatons* case in *Cooks* 4 Book.

Cook. l. 4. f. 16. b.

Where the Defendant said of the Plaintiff, that *He gave his Champion Counsell to make a Deed* of gift of his goods to kill him, *&c.* adjudged that the words were not actionable, because that the purpose or intent of a man without act, is not punishable by the Law.

And I conceive it will not be like the case put by *Tanfield, Just.* in *Harris* and *Hixons* case, where he saith that to say of another, that he lay in wait to Rob for to murder *J. S.* will bear an Action, because that he accuses him of an act; *viz.* The preparation and lying in wait which is punishable by the Law; but in the former case there is nothing but bare advice, which is not punishable by the Law.

Pasc. 5. Iac. in the Kings Bench.

Mic. 1. 5. Elix. Dyer, f. 317. f. 8.

Hawly brought an Action upon the case against *Sydnam* for these words, he

is infected of the Robbery and Murder lately committed, and smels of the murder, adjudged that the words were actionable, by reason of the word infected.

One said of another, thou diddest kill a Woman great with Childe, *innuendo* *Jocosam Uxorem cujusdam R. S. defunct.* And ruled by the Court that the Action would lie, though that the woman were utterly incertain, because that the offence and the party intended to commit it, is certain, and 'tis not like the case, where one said, that there is one in this company, who hath committed a murder; there it is incertain of whom the words were spoken, and cannot possibly bee ayded by an *innuendo*; but here the words are actionable without an *innuendo*; but *quere*, whether the Action would lie or no, because there is no express Averment that the Woman was dead, for the *innuendo* will not be sufficient. Mich. 2. Iac. in the Kings Bench.

Haselwood brought an Action against *Garret* for these words, (amongst others agreed not to be actionable) Whosoever is he that is falsest Thief, and strongest in the County of *Salop*, whatsoever he Pasch. 1. Iac. in b. R. Rot. 107.

he hath ſtollen, or whatſoever he hat done, *Thomas Haſlewood* is falſer the Averment hee, reſolved that theſe words are actionable, with an averrement that ther are Felons within the County of *Salop* but for default of ſuch averremen the Judgment being given in th Common Pleas was reverſed in thi Court.

Paſc. 5. Iac. in the Kings Bench. *Stoner* brought an Action for word againſt *Gambel*, and declares that th Defendant *dixit deprefato*; the plaintiff thou *innuendo*, &c. haſt ſtollen m Goods, and upon not guilty pleaded the Iury found for the plaintiffe, and i arreſt of judgment it was ſaid, tha the Count was nought for the worde Words in the ſecond perſon, though the party be not preſent, actionable. are in the ſecond perſon, and it is no alleadged that the Plaintiffe was pre ſent at the ſpeaking of them. *Et Tot Curia contra*, for *dixit deprefato*, is a much as *Dixit ad prefatum*, for can not he ſay thou haſt of the Plaintiffe except that it were ſpoken to him? an rule was given for Iudgment.

Cook l. 4. f. 15. One *Yeomans* ſaid of *Hext*, I do no doubt but within two daies to Arre *Hext* for ſuſpition of *Fellony*; adjudge that the words were Actionable, b

cau

cauſe that for ſuſpition of Felony, hee ſhall be impriſoned, and his life drawn in queſtion.

Hill. 20. *Jac.* in the Kings Bench, *Winch* came to the Barre and ſhewed a Libell againſt another in Court, Chriſtian for theſe words, thou art a Witch and dealeſt with Witchery, and diddeſt procure Mother *Bale* to witch the Cattel of *I. S.* and upon this prayed a prohibition, becauſe that the Plaintiffe had remedy at Law, and by *Fenner* and *Gawdy Juſtices* the others abſent, and prohibition lies, becauſe ſhe hath remedy at Law. So that thier opinion was that an action would lie at the Common Law for calling of one *Witch.*

And in one *Edwards* his caſe, *Hill.* 40. *Jac.* it was ſaid to have been three times adjudged, that to call one *Witch* would bear an action, and alſo that an action would lie for calling of one *Hag*; but I doubt of the latter becauſe I take *Hag* to be a doubtfull word. But why *Witch* ſhould not bear an action, I know no reaſon, being the life may be thereby drawn in queſtion, though I know it hath been doubted. Hil. 4. Iac. in the Kings Bench. Hob. Rep. p. 155.

Marſhall brought an action againſt *Steward*

Steward, for saying the Devil appears to thee every night in the likeneſs of a blackman riding upon a black Horſe, and thou conferreſt with him, and whatſoever thou deſt ask he gives it thee, and that is the reaſon thou haſt ſo much money, adjudged the words were actionable. Note *Reader*, that by the Statute of 10 of King *Iames*, *cap.* 21. Conjuration or Conſultation with the Divell is Felony.

Mich. 17. Car. in the Kings Bench. In the caſe of *Hawes*, *Mich.* 17. of the King that now is, this caſe was put and agreed by the judges; one ſaid of another that he had received a *Romiſh Prieſt*, adjudged actionable, becauſe it is Felony, he might receive a Romiſh Prieſt and yet not know him to be ſo, (like the caſes I have put you afterwards) therefore *Quære.*

Sir *John Sydenham* againſt *Timothy Man*, *Clerk*; I think in my conſcience that if Sir *John Sydenham* might have his will, he would kill all the Subjects in *England*, and the King too, and he is a maintainer of *Papiſtry* and *Rebellious perſons*. Theſe words upon a writ of Error in the Exchequer Chamber were adjudged actionable.

Hob. Rep. p. 152.

It seems somwhat hard to me *Reader*, that words of thought or opinion only should bear an Action, as these in the former words. And for the latter words, that he is a maintainer of *Rebellious Persons*; they are Adjective only, and do not import any Act of rebellion in these Persons, but only an inclination to it; but of this more hereafter. See fo. 32. b. Cook lib. 4. fo. 19. 2. b.

If a man say of another, that he doth like or approve of those that maintain sedition against the King. I conceive that these words are actionable, and sedition is a violent and publike thing, of which he cannot but have notice. Cook. l. 4. fol. 13.

This rule was agreed by the Iudges in the debate of a case in the Kings Bench, that many words (though of themselves they be not actionable) yet being equivolent to words that are actionable, will bear an Action. Pach. 12. Car. in the Kings bench.

And it was said by *Iones Iustice*, that in Yorkshire straying of a *Mare*, is all one with Buggering of a Mare, and therefore he said that an Action will lie for these words, with an averment that they tantamount to Buggering of a Mare. Note by his opinion in such

case there must be an averment of the meaning or importance of the words.

Averment

Yet my Lord *Hobart* hath severall cases adjudged, where a man brought an action for *Welch* words, and did no aver what the words did import in English, and yet judgment was given for the Plaintiff, and the Court took information upon Oath by *Welchmen* what the words meant in English.

Hob. Rep. pa. 165. & 268. pl. 236. Gibs and Ginkins case, averment.

And in one of the cases Serjeant *John Moore* then informed the Court that judgment had been given in the King's Bench in the case of *Tuch* upon these words, *Thou art a healer of Fellons*, without any averment, how the words were taken; because the Court was informed and took knowledg that in some Counties it was taken for smotherer of Feilons.

6 Iac. in the Kings Bench.

The case intended by Serjeant *Moore* was I conceive the case of *Pridham* and *Tucker* in the Kings Bench, where the words were adjudged actionable without an averment, and in this case it was agreed that words may be slanderous in one County and not in another; for in *Norf.* they know not what *healer* signifieth, but this being in *Devon-*

Pasch. 7. Iac. in the Kings Bench.

Words slandrous in one County & not in anothe.

venshire where this word is used for concealer of Theeves, will be actionable.

And I take this to be generally true, that in all cases where a mans life may be drawn to question by scandalous words, that such words are actionable.

And now I shall cite a case or two, *where words spoken which touch a mans life, which are by way of interrogation, or by way of hearsay or relation; or lastly by way of negation only, and yet will bear an Action.*

Pasch. 15, Car. Words spoke by way of interrogation.

It was said at the Kings Bench Bar [which I heard and observed,] that it had been adjudged in this Court in one *Appletons* case, that where a man said to another, where is my *peece* thou stolest from me? that these words were Actionable.

And *Jones, Justice*, then said, that he remembred this case to be adjudged. *A.* said that *B.* told him that *C.* stole a Horse, but he did not believe him, that these words, with an averment that *B.* did not say any such thing to *A.* were actionable.

Hil. 41. Iac. in the Kings Bench. Rot. 1.

Agreeing with this case is the Lady *Morrisons* case Widdow, who brought an action for words against *William*

Cade Esquire, and declares that she was of good fame, &c: and that *Henry* Earl of *Kent* was in speech and communication with her concerning Marriage, the Defendant *premissorum non ignarus*, said these words, *Arscot* hath reported that he hath had the use of the Lady *Morrisons* body at his pleasure; *ubi revera, Arscot* did never report it, and alledges that the Earl of *Kent* upon the hearing of these words surceased his suit, by which she lost her advancement, &c. adjudged that the words were Actionable though spoken upon the report of another; for otherwise a man might maliciously raise slanderous reports of another, and should never be punished for it.

But in this case *Tanfield, Justice*, said that if it had been expresly alleadged that in truth it was so reported by *Arscot* then an Action would not lye against *Cade* for saying that *Arscot* reported it because it is true that he did so.

Pasch. 15. Car. negative words actionable.

And *Bartley Justice*, said, that an action had been brought for these words, *You are no Thiefe*. In which there was an averment, which implyed an affirmative, and agreed to be Actionable, and

Appleton

Appletons case was then agreed for Law.

A. said to I. *hast thou been at* London *to change the monies thou stolest from me?* In this case it was objected, that these words were not actionable, because that they are spoken only by way of interrogation, and are no direct affirmative. But *Jones and Bartley, Justices*, (the others being absent) both said that the words were actionable; for the first words, *Hast thou been at London, &c.* are the only words of interrogation, and the subsequent words, viz. *The money thou stollest from me*, is a positive affirmation; and *Bartley Just.* then said, that it had been often times adjudged that words of interrogation should be taken as a direct affirmation, which *Jones Just.* also agreed, and further said that this case had been adjudged. Mich. 15 1. Car. in the Kings Bench. Words of Interrogation.

One said to another, I dreamt this night, that you stole a horse, these words were adjudged actionable: And he said that if these and the like words should not bear an an Action, a man might be as abusive as he pleased, and by such subtill words as these, alwayes avoid an action, And now I will put you a case or two, I dreamt you stole a Horse, actionable.

where words which imply an affirmative shall be actionable.

Pasch 15. Car. in the King Bench. One said of another, he would prove he had stollen his Books. In this case the opinion of the Court was that the words were actionable, because they imply an affirmative; and are as much as if he had stollen his Books. And so if I will say of another, that I will bring him before a Justice of Peace, for I will prove that he hath stolen &c though the first words are not actionable, yet the last are.

Pich. 5. Iac. in the kings Bench. *Whitacres* brought an action against *Lovington* for these words, I will prove that *Whitacre* is forsworn, and that ten men can justifie, and I could prove him perjured if I would, adjudged that the words were actionable, for that it is a great slander to be reported, that it is in the power of any one to prove one perjured, and it is as direct affirmance.

Pasch. 7. Iac in the kings bench. It will be proved by many vehement presumtions, that *Welby* was a plotter and contriver of *Thomas Powels* death, because he would not sel his Land to the said *Welby*, adjudged the words were actionable.

And now I have shewn you the affirmative

firmative part, where words which touch or concern a mans life, ſhall be actionable; I ſhall now ſhew unto you the negative part, where words in ſuch caſe ſhall not be actionable:

Words that touch or concern a mans life may not be actionable in theſe caſes, where they are too general, or not poſitively affirmative, or of a double or indifferent meaning, or doubtfull in ſenſe; or for that they are incertain in themſelves, or the perſon of whom they are ſpoken, or elſe by reaſon of the ſubſequent qualification of the words, or becauſe they do not import an act, but an intent, or inclination only to it; or for that they are impoſſible, or laſtly, becauſe it doth appear that the ſpeaking of them could be no damnage to the Plaintiff, in all theſe caſes the words will not be actionable.

And firſt, Words that are too generall, or not poſitively affirmative, will not be Actionable.

To ſay of a man that he deſerves to be hanged; adjudged not actionable, becauſe they are too generall, for that hee doth not ſhew any thing that hee hath done to deſerve it: and by *Yelverton, Juſtice*, he may deſerve it for unnatu- Mich. 4. Ja. in the kings bench.

rall using of his parents, and the like where he shall not be punished by the Law,

Cooke. lib. 4. f. 15. b. *Yeomans* and *Hexts* case, for my ground in *Allerton*, *Hexts seeks my life*, adjudged not actionable, because seeking his life is too generall, for which there is no punishment.

Pasch. 7. Iac. in the Kings Bench. So if I say of another that it is in my power to hang him, adjudged not actionable, in *Pridham* and *Tuckers* case cited before, because the words are too generall.

Hob. rep. P. 247. pl. 296. *James Steward* brought an action against *Bishop*, for saying of him, that he was in *Warwick* Goale for stealing of a Mare and other Beasts, and adjudged, that the words would not bear an action, because they do affirm directly that he did steal them; as if he had said that he stole them, and was in Goal for it, but only make report of his imprisonment, and the supposed reason of it, and it may very well be, that the Warrant of *Mittimus* was for stealing expressly, as is the common form of making of the Kalender of the Prisoners for the Justices of Assise, and the like.

George

George Bland brought an Action against *A. B.* for saying that he was indicted for Fellony at such a Sessions; it was said, that it was questioned, whether an action would lie, because an Indictment is but a surmise. But I conceive that it is without question, that no action wil lie in such case; because that to say a man was indicted of Fellony, is no more than to say he was impeached or accused for Fellony, which an honest man may be; and is no positive affirmation that hee had committed Felony, and so it hath been often adjudged; I will only cite one case in the point, Hob. Rep. pa. 309. pl. 289.

Hastewood brought an action against *Garret*, for these words, *I can find in this Parish, a falser knave than* Briscoe *is, he which* Briscoe *is indicted of Fellony and burglary, and is gone to* Stafford *Goale, and that false knave is* Thomas Hasselwood, *&c.* it was adjudged that these words are not actionable, because that *Briscoe* might be indicted, and yet be an honest man. Pasch. 1. Jac in the kings bench. Rot. 107.

Thou hast lain in Fullers Tubbs, in which none come, but those that have the Pox, adjudged the words were not actionable, because this is no direct affirmation 37 Eliz. Chappel and Burroughs case.

tion

tion that the Plaintiff had the Pox.

Hob. rep. p. 425. pl. 381. *Poland brought an Action against M[illegible] son, for saying, I charge him* (meanin[illegible] the Plaintiff) *with Felony, &c.* adjud[illegible] ged the words were not actionable, b[illegible] cause that he doth not affirm that h[illegible] is a Felon, but doth only say, that h[illegible] doth charge him with Felony, whi[illegible] he may do in some cases, though he d[illegible] not the fact, as if a Felony were don[illegible] and the common fame were, that he d[illegible] it, any one that suspects him may char[illegible] him with it.

Hob. rep. p. 308. pl. 286. *Henry* brought an Action agai[illegible] *Fitch* for these words; I *arrest you f[illegible] Felony*; agreed that the words were n[illegible] actionable, for this is no positive char[illegible] that he was a Felon, and this may [illegible] lawfully done upon a common fame a[illegible] said before: thus you see that words th[illegible] are not directly affirmative wil not b[illegible] an action.

Yet you may see before, *fol.* 7. wh[illegible] words which imply an affirmative o[illegible] shall be actionable, as to say, that I w[illegible] prove that you stole my Books, or t[illegible] like, but of this sufficient.

fol. 10 b. & 11 Secondly, *Words that are of a dou[illegible] or indifferent meaning, the Law will t[illegible]*

in the best sense for the speaker, and so adjudged them actionable, for the rule of Law (as I have said before) *that verba accipienda sunt in mitiori sensu.* Cook l. 4. fol. 15. b.

Yeomans and Hexts case cited before, for my land in Allerton, Hext seeks my life, &c. adjudged these words were not actionable, because he may seek his life lawfully upon just cause; and his Land may be stolen of him, and so *in mitiori sensu.*

Barham brought an action upon the case against *Netherfall*, and the words were, Master *Barham did burn my barn, innuendo, a barn with Corn, with his own hands, and none but he*: and after verdict, it was moved in arrest of judgment, that the words were not actionable; for it is not Felony to burn a Barn if it be not parcel of a Mantion house, nor full of Corn: And in such case *aliter civiliter*, and not *criminaliter*: and words must be taken in *mitiori sensu*, and the *innuendo* will not serve when the words themselves are not slanderous. Cook. l. 4. fol. 20. a.

James his case, hang him he is full of the Ox, I marvail that you will eat or drink with him &c. adjudged that the Cook l. 4. fol. 17.

words

words were not actionable, beca
they shall be taken *in mitiori sensu*,
the small Pox, and not the French Pox

But note that in *Hawry* and *Ma*
Mich. 20. Iac. in the king's Bench. case cited afterwards, it was said
Fenner, Iust. that to say, that a man
laid of the Pox, will beare an Acti
becauſe that is the phraſe for the Fren
Pox.

Hob. rep. p. 106. pl. 971. *Adrian Coote* brought an Acti
against *Adrian Gilbert* for theſe word
Thou art a Thiefe, and haſt ſtollen a Tr
adjudged that the words were not acti
nable, and agreed that there is no diff
rence between, *and thou haſt ſtoll*
and for thou haſt ſtollen; for in comm
acception (and) is to be underſto
to be but a verifying and making go
of the generall word (*Theefe*) and th
a Tree ſhall be underſtood rather of
Tree ſtanding, than felled; which c
be no Felony or Theft; for that a ma
cannot ſteal a mans inheritance.

Hob. rep. p. 473. pl. 606. So *Clark* brought an Action again
Gilbert, for theſe words; *Thou art*
Theefe and haſt ſtollen twenty load of w
Furz, adjudged that the Action wou
not lie for the reaſons given in th
former caſe.

The

The like Law is, if a man say of another that he hath stollen his Apples, or his Corn, or robbed his Hop Ground, or the like, the Law in those cases will adjudge them rather growing, than gathered or cut down, and so the words not actionable. Cook, lib 4. fo. 19. b.

Thus it is evident, that where the words may be taken in a double or an indifferent meaning, that the Law will ever take them best for the Speaker. I shall onely put one case more upon this ground, and so pass it over.

Pawlin brought an action against *Ford* for these words, thou art a Theevish rogue, and hast stollen my Wood. It was in this case said at Barre the Action would not lie, because it should be construed rather to be wood standing than cut down, like those cases put before. Trin. 18. Car. in the Kings Bench.

But *Bramston*, *Chief Justice*, seemed to incline, that the words were actionable, because that (Wood) cannot be otherwise intended than of Wood cut down, according to the old verse, *Arbor dum crescit, lignum dum crescere nescit*, and so it was adoujrned without more saying.

Note

Trin. 4. Jac. in the king's bench. Rot. 1366

Note *Reader*, according to the opinion of *Bramston Chiefe Justice*, betwixt *Litchfield* and *Saunders* for the saying words, he hath stolen my wood, to which the defendant demurred, it was adjudged that the action would lie, for *Tanfield, Justice*, said that the words shall be intended according to the most usuall sense, *viz.* That it was *Lignum* and not *Arbor*, as if one say, that the Plaintiff hath committed a murder, it shall not be intended that he hath murdered a Hare, but a man.

Words must be taken according to common intent.

You may here observe (Reader) *that though the words of a double or indifferent meaning ought to be taken in the best intendment for the speaker, as I have sufficiently declared it unto you, yet they ought not to be taken contrary to common intendment.*

For as you shall not strain words to an intent not apparent, to make them actionable, so you must not rest them contrary to common intent to make them not actionable; this is apparent by *Sanders* his case immediately before, where it is adjudged, that to say of another you have stolen my wood, shall be intended to be *Lignum*, and not *Arbor*,

an

nd ſo actionable; to ſay of a man that he hath committed a murder, ſhall not be underſtood murdering of a Hare but Man.

Dame *Morriſon* brought an action againſt *William Cade* Eſquire, and declared that ſhe was of good fame, *&c.* and that *Henry* Earle of *Kent* was in ſpeech and communication with her for mariage the defendant *promiſſe num non ignarus*, ſaid theſe words, *Arſcot* hath reported that he hath had the uſe of the Lady *Morriſons* Body at his pleaſure; *abirevera*, *Arſcot* never reported it. And further alledges that the E. of *Kent* upon the hearing of theſe words ſucceſſed his ſuit, by which ſhe loſt her advancement, the Defendant pleaded not guilty, and it was found by the Plaintiffe. It was moved by *Hobart* Attorney *General* that the words were not Actionable, for this reaſon (amongſt others all ruled againſt him) becauſe that the words had the uſe of her Body were incertain and of a double intendment, and therefore ſhould bee taken in the beſt ſenſe, to have the uſe of her Body, as a Taylor in meaſuring, or a Phyſitian in giving Phyſick or the like, and not in any worſe ſenſe. But

Hill. 43 Iac. in the king's bench. rot. 1153.

Words taken according untocommon intent.

But by *Popham*, chiefe Iuſtice, the words are actionable, when words are ſpoken that may have a double intent or meaning, they ſhall be expounded according to common intent, for otherwiſe, he which intends to ſlander another, may ſpeake ſlanderous words which by common intendment ſhall be expounded a ſlander, and yet no Action lie. And here the words hath had the uſe of her Body at his pleaſure, ſhall not be intended in any lawfull manner, but licentiouſly, and diſhoneſtly; for this is the common intent, with whom all the other Juſtices agreed.

Mich. 15. Eliz. Dyer, f. 317. pl. 8

Thirdly, where the words are doubtfull in ſenſe or meaning, there likewiſe they will not be actionable.

Hob. rep. p. 59. pl. 323. Cook l. 4. fol. 15. b.

To ſay that a man ſmels of a murder lately committed, will not bear an action, becauſe the words are of a dubious ſenſe and intendment.

Bradſhaw brought an action againſt *Walker* for theſe words, thou art a filching fellow, and diddeſt filch from *William Parſon* a 100. l. adjudged that the words were not actionable, becauſe that they are of incertain ſenſe and meaning.

So

So to call one Harlot, will not beare an action. And upon this ground, I conceive (as I have ſaid before) that to call a Woman *Hagge*, will not be actionable. Cook lib. 4. 15 b.

So, to ſay of a man that he is a *Healer* of *Felons*, or that he ſtrained a Mare, as the caſes are before put; will not be actionable, becauſe of their doubtful ſenſe and meaning, without the words bee ſpoken to ſuch who knows the meaning and inrendment of them.

Fourthly, where the words themſelves are uncertaine, or the perſons of whom they are ſpoken, in ſuch caſe they will not be actionable.

And firſt, for the uncertainty of the words, that is, when the ſcandall is not certaine and apparent in the words themſelves. ve. ſo. 8: ſo. 9.

Note *Reader*, that all the caſes put before upon the double or indifferent meaning of words are apt to this purpoſe; As thoſe, thou haſt ſtollen my Apples, or my Corne, or ſo many load of my Furzes, or a Tree, or the like, the words in theſe caſes are not Actionable, becauſe the ſcandall is not apparent, and certaine by the words; for in every of theſe caſes (for ought appeares by the

words) the thing ſaid to bee ſtollen might be growing, and then it is a treſpaſs onely and no felony, and to charge a man with a treſpaſs, wil not be actionable.

But if the words were, thou haſt ſtollen my Apples out of my Loft, my Corn out of my Barn, or my Furz or Wood out of my Yard, in ſuch caſe the words would be actionable, becauſe the ſcandall is apparent, for that it is evident by the words, they were not growing.

Hob. Rep. pag. 8. pl. 11. *Edward Miles* brought an Action againſt *Francis Jacob*, for theſe words thou haſt poyſoned *Smith*, &c. upon a Writ of Error in the Chequer Chamber, it was adjudged, that the Action would not lie, becauſe it did not appear by the words, that it was done wittingly.

Hob. rep. p. 268. pl. 336. *Gibs*, and *Jenkins* caſe; to ſay of a man that he bore away money, or the like will not be actionable.

Mich. 15. Car in the Kings bench. *A.* ſaid of *B.* that he took away money from him with a ſtrong hand, for which, *B.* brought an action, adjudged that it would not lie.

Bramſton, Chiefe Juſtice, in the arguing of *Hawes* Caſe, *Mich.* 17. of the

Kin

King in the Kings bench, remembred this case, he did assault me, and tooke away my purse from me; and he said that it was adjudged that the words were not actionable: The reason of these cases, is, because that for ought appears by the words (which are of themselves uncertain) these might be Tresspasses onely, and no Felony, 37 Eliz. in the Comm. Pleas.

Againe, where the person scandalized is uncertain, no action will lie.

If one say (without any precedent communication of any person incertain) that one of the Servants of *B.* (hee having divers.) is a notorious Felon or Traytor, &c. here for the incertainty of the person no action lyes; neither can it be made good by an (innuendo.) Cook. lib. 4. fo. 17. b

So, if one say generally, I know one heere about *B.* that is a notorious theef, or the like, no action will lie, for the same reason. Cook, ibid.

So as it is in *Fleetwoods* case in *Hobarts* Reports; if a man say, looking upon three persons, one of these murdered a man; no action will lie for these words, by reason of the incertainty of the person, neither can an innuendo, Hob. Rep. pa. 375. pl. 351.

help the incertainty; and Note *Reader*, that these Cases are not like *Wiseman's* Case.

Wiseman of *Grayes-Inne*, brought an Action against *Wiseman* of *Lincolns-Inne* his Brother, for these words, my Brother (meaning the Plaintiff) is perjured, and I will justifie it, upon not guilty pleaded, it was found for the Plaintiff, and it was moved in arrest of judgment that the words were not certaine enough to ground an Action upon, because the Plaintiff might have more Brothers, and it doth not appear of which of them the words were spoken, but it was resolved that the action would well lie, because it is alledged that they were spoken of the Plaintiff and the Jury have found accordingly and here *Tanfield* Justice, took his difference; where the words themselves are incertaine, as to say, one of my Brothers is perjured, there they can never be made good by an averment, but where the words are certaine, in themselves, so that it may appeare that the Speaker intended a person certain there may be made certaine by such Declaration, and the finding of the Jury.

Mich. 3. In the Kings-bench.

And it was ſaid, that if it were true, that there were divers Brothers the Defendant ſhould have pleaded it, and then iſſue ſhould have been taken, whether the words were ſpoken of the Plaintiff or no.

Nor are the former caſes, like a caſe which I cited before, *Mich.* 2. *Jac.* where an action was brought for theſe words: thou diddeſt kill a Woman great with Childe, (*innuendo, Jocoſam Uxorem cujuſdam R. S. defunct.*) where it was ruled that though the Woman were utterly incertain yet becauſe the Offence and the party intended to commit it were certaine, the action would well lie. Mich. 2. Iac. in the King's bench.

Foxcroft brought an action againſt *Lacy*, and declared that a communication was moved between *John Walter*, and *Richard Guyn* Eſquires, concerning a certain ſuit, wherein the Plaintiff and certaine others were Defendants, and that the Defendant *Lacy* upon the ſaid Communication in their preſence ſpake theſe words: theſe Defendants (meaning the plaintiff, and the others) are thoſe that helped to murder *Henry Parrar* (meaning one Hob. rep. fa. 122. pl. 118.

Words certain by relation.

Hen. Farrer deceased) who was murdered by one *T Gulfeld*, who was hang'd for it, adjudged the words were actionable, and that they were as sufficiently laid to intitle every of the Defendants to a severall Action, as if they had been specially named, here you see the words may be sufficiently certain by relation.

Fifthly, *where former words actionable are qualified with subsequent words not Actionable, there though the former words spoken generally, and by themselves would have maintained an Action, yet now, taking altogether, they will not be Actionable.*

Thou art a Theefe, for thou hast stollen my Apples out of my Orchard; or, for thou hast robbed my Hop ground, or, for thou hast stollen a Tree, or, for thou hast stollen my Furzes; as I have put you the cases before. Or, thou art a Theef, and thou hast stollen my apples out of my Orchard; or, and thou hast robbed my Hop-ground, &c. (and) and (for) have both one, & the same signification in these cases, as I have cleered is to you before to be adjudged; and in all these cases no Action will lie.

For

For (as I have ſaid before) the latter words do qualifie the former, for the former words ſay him to be a Theefe, but the latter prove him to be none. I have given the reaſon before, becauſe that in all theſe caſes, the Law which will alwaies conſtrue words the beſt for the Speaker, will take the Apples, Hops, &c. to be growing, and then it is Treſpaſs only and not Fellony to take them away, becauſe felony as I have told you before, cannot be committed of that wch is parcel of a mans inheritance as theſe are whilſt they are growing.

Britteridge brought an Action for theſe words: *Britteridge* is a perjured old knave, and that is to be proved by a Stake parting the land of *H. Martin*, and *M. Wright*, adjudged that the words are not actionable, becauſe though the former words would beare an Action, the latter do ſo qualifie and extenuate them, that taking altogether they are not Actionable, for the latter words do explaine his intent, that hee did not intend any judiciall perjury; alſo it was impoſſible that a Stake could prove him perjured, and therefore for the impoſſibility, and inſenſibility of Cook lib. 4. fo. 19. 2. b.

the words the action would not lie.

Sixtly, where the words doe not import an act, but an intent onely, or an inclination to it, there such words (except where they scandall a man in his function or profession) will not bear an Action.

Cook lib. 4. fo. 19. a. b. If a man say of another, that he is a seditious knave, or a theeviſh knave, or a trayterous knave: theſe words wil not bear an Action; becauſe that the words do not import that hee hath done, or is guilty of ſedition, Felony, or Treaſon, but are Adjective words, which import an inclination to it onely,

But if a man ſay of another, that he is a perjured knave, an Action will lie for theſe words, becauſe that the Adjective (*perjured*) preſumeth an Act committed, or otherwiſe he cannot be perjured.

Cook. ibid. Beſides, Adjective words will beare an action, when they ſcandall a man in his Office, Function or Trade, by which he doth acquire his living, though they doe not import an act done.

My Lord *Cooke* cites this Caſe adjudged 24. *Eliz.* between *Phillips, Parſon* of *D.* and *Badby*, in an action brought for theſe words, *thou haſt mad*

made a ſeditious ſermon, and moved the people to ſedition this day: reſolved that the words were actionable, notwithſtanding that the firſt part of the words were utter adjective, and the laſt words were but a motive to ſedition, and it doth not appeare that any thing enſued, yet becauſe that they ſcandall the plaintiff in his Function, they were adjudged actionable.

Mic. 42. & 43 El. Z. in the common Plea. Mottons caſe

So, if a man ſay of a Merchant, that hee is a Bankruptly Knave, or a Bankrupt Knave, theſe words will beare an action, though that the Bankrupt bee adjective.

6. E. 6. Dyer. f. 72

Or if one ſay of a Merchant, *that hee will be Bankrupt within two days,* which imports but an inclination, yet an action will lie: for theſe ſcandalls reach to the profeſſion.

Cook lib. 4. fo. 16. a. & 19. a

So, if a man ſay of an Officer or Judge, *that hee is a corrupt Officer or Iudge,* though the words be adjective, yet an action lyeth for both cauſes; firſt becauſe the words touch him in his Office, and then becauſe they do import an act done.

Hob. Rep. pag. 12. *pl.* 17. *Yardly* and *Ellils* caſe, to ſay of an Attorney, *that hee*

he is a bribing knave, will beare an action, though the words be adjective.

Words likewise that import an intent only, will not bear an action.

Cook lib. 4. fo 16. b. Eaton. The defendant said of the plaintiff, *for he is a brabler & a quarreller, he gave his Champion counsell to make a deed of gift of his goods to kill me, &c. but God preserved mee*; the book saith, that it was strongly urged, that the Action should be maintainable, and divers cases cited, which I wil remember unto you.

Mic. 32. & 33 El. 7, in the Kings Bench. My Lady *Cockeins* case for these words; *My Lady* Cockein *offered to give poyson to one to kill the Childe in her body.*

Another betwixt *Tibots* and *Heyns* in *Gloceſter* for these words, *Tibots and another did agree to hire one to kill* B.

Also *Cardinals* case for these words, *If I had consented to Master* Cardinall T: H. *had not been alive.*

And the Lord *Lumleys* case: *My Lord* Lumley *hath gone about to take away my life, against all Christian dealing.*

But notwithstanding these cases, the book saith, that upon great deliberation and advisement, it was adjudged that in the principall case the words were

were not actionable, becauſe that the purpoſe or intent of a man without act, is not puniſhable by the Law. My L. *Cooke* in the cloſe of this caſe, ſayes, Note well this caſe, and the cauſe, and reaſon of the judgment.

Certainly *Reader*, there is ſomewhat more than ordinary in this (*Nota bene*) of my Lord *Cookes*; and the reaſon of the caſe ſeems to intimate as much unto us: which is, that the purpoſe or intent of a man without act, is not puniſhable by the Law, which is a certain truth:

But I conceive it is as true, that where that purpoſe or intent is manifeſted by an over act or attempt, that that is puniſhable.

Mich. 4. of King *James* in a caſe in the Kings bench; this was agreed for Law, to ſay of a man, that he lay in wait to aſſault *J. S.* with an intent to rob him, or to murder him, an action lyes, becauſe that he doth accuſe him of an act, *viz.* the preparation, and lying in waite to aſſault him, but if hee had ſaid that he would have murdered or would have robbed *I. S.* an action would not lie, becauſe he only gueſſes at his imagination. And

Mich. 4. Jac. in the King Bench.

Pasch. 5. Iac. in the king bench.

And in *Harris* and *Dixons* case in the Kings Bench, that case was allowed for law by *Tanfield* Justice, where he said, that if one say of another, that he lay in wait to murder *I. S.* an action lyes, because such lying in wait is punishable by the law.

By this case it should seem, that to charge a man with an attempt onely to commit Felony, as to say of a man that he offered to rob, for to poyson, or to murder I.S. that these should be actionable, for I think the like punishment is in these cases, as in the former, which I conceive is only the good behaviour, or at most indictable for it, and thereupon fined.

And if an action should lie in such case, by the same reason to say of a man, that he is a common Quarreller, breaker, or perturber of the Peace, or that he is a Rioter or the like, would beare an action, because that for these likewise the good behaviour is grantable, and likewise a man may be indicted for them, therefore *quære* of the former cases.

Seventhly, words which are apparently impossible, will not be actionable.

Benson

Benson brought an action against *Morley* for these words; *Thou hast robbed the Church (innuendo Ecclesiam sic Alhagi extra Creplegate London) and hast stollen the Leade of the Church*; Upon not guilty pleaded it was found for the plaintiff, and it was moved in arrest of judgment, that the words were not actionable, because the Church shall be intented the Universall Church, and not any materiall Church, and the Church Militant cannot bee robbed and so the words are impossible: but by *Popham* chiefe Iustice, and *Tanfield* Iustice, the action will well lie, and so it was adjudged, because the words in this case cannot be intended of an invisible Church, as is objected, but of a materiall Church, as is explained by the subsequent words, *and hast stollen the lead of the Church*: which cannot be understood of the invisible Church,

Pasch. 5: Iac in the Kings Bench.

In this case *Reader* you may observe that it is admitted, that to say of a man *that he hath robbed the Church*, generally will not be actionable; because that it shall be understood of the invisible Vniversall Church, and so the

words

words impossible, because that cannot be robbed.

So I conceive to say of a man, that he hath robbed a Church, will be actionable, because this must of necessity be understood of some particular materiall Church.

Mich. 15. C. in the Kings bench. *Dickes* a Brewer brought an Action against *Fenne*, for these words; *I will give a peck of Malt to my Mare, and leade her to the water to drink, and she shall piss as good beere as Dickes doth brew*: adjudged the words were not actionable, because impossible, and therefore they could be no scandall to the Plaintiff.

Cook lib. 4. fo 19. a b. *Britteridge* brought an action for these words, *Britteridge is a perjured old knave, and that is to be proved by a stake parting the land of* H. Martin, *and* M. Wright. adjudged the words were not actionable, because that it was impossible that a stake could prove him perjured.

Lastly, where it doth appeare that the speaking of the words could be no dammage to the Plaintiff, there likewise no action will lie.

Cook 14 fol. 16. a. The Plaintiff shewes in his Count that

that the Defendant hath a wife yet in life, and that the defendant said of the plaintiff, *Thou hast killed my Wife:* adjudged that the words were not actionable, because that it doth appeare by the Plaintiffes Declaration, that the Wife of the Defendant was in life, so that by these words the Plaintiff could not bee in any jeopardy nor scandaled, or damnified by them.

The like case was put in Sir *Thomas Holt* and *Taylors* case, *Pasch.* 5. of King *James*: if one say of a woman, *That she hath murdered her husband*, and shee and her husband bring the Action, it wil not lie, because it doth appeare by the record, that the slander is not prejudiciall. *Pasch.* 5. Iac. in the king's bench.

And as when it doth appeare by the record, that the speaking of the words could be no dammage to the Plaintiff, no action will ly. So where the speaking of the words might be a dammage to the Plaintiffe, yet if the ground of that damnification doe not sufficiently appeare by the record, the action will not lye.

A. Brought an Action against *B.* for saying, *That hee kept false Waits by which he did cozen, &c.* and declared *Mic.* 15. car. in the common Plea.

that

that hee gained his liviying by buying and selling, but did not shew of what profession he was; adjudged that the action would not lie, because it cannot appeare (without shewing his profession) that the speaking of the words could be any dammage to the Plaintiff.

Trin. 17. Car. in the common Pleas.

A. Brought an action against *B.* for these words; *Thou hast killed my Brother (innuendo G. &c. fratrem, &c. nuper mortuum)* adjudged that the words were not actionable, because the Plaintiffe did not aver, that he was dead at that time when the words were spoken, and if hee were living then the speaking of the words could be no slander or damage to the plaintiff.

Hob. Rep. pag. 159. a. pl. 145. Ja. 165. a. pl. 154, & 161, pl. 236

So, where a man brings an action for *Welsh* words or the like, which are scandalous, and doth not aver, or set forth that they were spoken to one who understood the meaning of them, the action will not lye, because it doth not appeare by the record, that the speaking of the words, could be any dammage to the Plaintiff. For if they were spoken to one that did not understand the meaning of them, no action would

lie, because they could bee no scandall to the Plaintiff.

And now I shall adde to the rest, only this one ground where words shall not bee actionable, and that is in this case.

When a man is charged with a crime or offence by scandalous words, where it doth not appeare by the words, that he had notice or knowledge of the ground or occasion of the crime or offence, in such case no Action will lie for such words.

. *Bridges* brought an action for these words, he (*prefat Bridges innuendo*) is a maintainer of Theeves, and he keepeth none but Theeves in his house, and I will prove it; upon a writ of Error in the Chequer Chamber, it was holden the words were not actionable, because he might maintaine Theeves without notice, and therefore the first judgement was reversed.

Like the case in my Lord *Hobarts* booke, where an action was brought against another, for saying, that the plaintiff kept men which did rob upon the Highway, adjudged that the words would not beare an action, because that hee might keepe them, and

Mic. 40. & 41. of the Queen in the common Pleas

not know them to be such persons.

In the case of *Reade* and *Saul*, which was *Mich.* 40. & 41. of the Queene, this case was remembred by *Wormeslay*, *Justice*, a man brought an action in that Court for these words, he (meaning the plaintiff) is a receiver of Theeves, and he said that in this case the Plaintiffe could have no judgment, because that he might receive thieves, and yet not know them to be so.

Mich. 7. Car in the common Pleas.

A. said of *B.* that he kept false waits, for which *B.* brought his action; adjudged that the action would not lye, because that it did not appeare that hee did use them: and besides, for that hee might keepe false waites, and not know them to be so.

Hob. rep. 18. pl. 21.

The case of *Miles* and *Jacob*, cited before, is likewise to this purpose, where an action was brought for these words, thou hast poysoned *Smith*, adjudged that the words would not bear an action, because that it did not appeare that he did it wittingly.

Cook lib. 4. fo. 15.

Stanhop brought an action against *Blith*, for these words, Mr. *Stanhop* hath but one Mannor, and that he hath got by swearing and forswearing, resolved

that

that the words were not actionable, for this reason (amongst others) for that he might recover or obtaine a Mannor, by swearing and forswearing, and yet he not procuring or assenting to it.

And now I am come to the second part or clause of that generall rule layed down before, where I am to shew you,

That scandalous words which touch or concern a man in his liberty, will beare an Action.

By the Bookes in the Margent, the Law is plaine, that if I publish and claime *B.* to my Villeine, that in such case no action will lie, because I my self claime an interest in him, and the Law will not in such case punish a man; for then no man durst claime his own for fear of an action.

2. E. 4. 5.
15. E. 4. 32
17. E. 4. 3.
13. H. 7. Kilway. fo. 25. b.
27. 21.

But upon these Bookes I conceive the Law is evident, that if a man had published another to be the Villeine of *I. N.* that in such case an action would have layen, because these words tend to the enslaving of him, and his posterity, and to the utter deprivation of his Liberty which the Law so much favours, for, as it is well known, he that was a

Villaine, he was subject both in person and estate to the will of the Lord, so that he might seize all his Estate reall and personall, and vassalize his person at pleasure, so that he did not kill or maim him.

But I conceive that at this day an action in such case will not lie, because that time and inconvenience have quite abolished and worn out this Bondage, our Books have little upon this ground, therefore I shall thus pass it over.

Scandalous words which touch or concern a man in Member, or in any corporall punishment, will beare an Action.

Hob. Rep. pa. 258. Male and Rets case, & 27. H. 8. 22.

A man brought an action for calling him Theefe, and that he had stollen 2. Sheepe from *B*, the Defendant justifies the calling of him Theefe, for that the plaintiff did steale the Sheep, and it was good by the whole Court, without expressing the value of the Sheep, for if they be not worth twelve pence, so that it is but petty Larcery, and not capitall, yet it is Fellony in its nature.

By this it is evident, that to say, a man hath stollen six pence from *B*. will beare an action, though it be but petty Larcery, because the Offender by Law may

may be impriſoned and whipt for it.

If a man ſay of another that he is perjured, or that he hath forſworn himſelf in ſuch a Court, an action will lie for theſe words For by the Statute of 5. *Eliz.* cap. 9. A man covnict of perjury, forfeits 20. l. and is to have ſix moneths impriſonment, and his teſtimony taken away while that conviction ſtands, and if hee have not Goods and Chattels to the value of 20. l. then he is to be put into the pillary, and his Ears to be nayled; ſo that you ſee here is an immediate corporall puniſhment given by this Statute, which is impriſonment. Cook lib. 5. fol. 15 & 19 br. Action upon the caſe 104. Hob. Rep. 114. l. 107.

And if a man ſay of another, that he can prove him perjured, an action will lie, though it be but an implied affirmative. See 57. 2. b.

Hearle againſt *Treſham*, thou haſt taken a falſe Oath in the Seſſions of, &c. reſolved the words were actionable, for the Court ſhall intend this to bee a Court of Record, as Records of which they ought to take conuſance. Mich. 1. Ia. in the kings bench.

Adams againſt *Flemming*; he hath forſworn himſelf before the Counſell of the *Marches* of *Wales* in the ſuit I had Hob. rep. 396. pl. 360.

against him there for perjury; adjudged actionable.

In *Lelicke* and *Wrinckemores* case, *Mich.* 7. of King *James* in the Kings Bench, one *Cosimans* Case was cited, which was thus, thou wast forsworn in such a Bishops Court, it was said that these words were adjudged actionable, and soit was agreed by the Court.

24. of the Queen Cosimans case.

Mich. 41. & 42. of the Queen in the common Pleas.

It was moved by *Williams* in Arrest of Judgment for these words, thou art a forsworn knave, thou wast forsworn in *Ilcon* Court (*innuendo*, the Court *Leete* there holden) it was agreed, that the (*innuendo*) should not stretch the words further than they were spoken: and *Williams* put this case, which was in the Kings bench, thou art a forsworn man, thou wert forsworn in White Church Court, which was affirmed by all the Serjeants to be adjudged not actionable.

Cook lib. 4. f. 15. b. Yet quere whether the judges can intend this a court of Record.

Which case I conceive, cannot bee Law, because it is adjudged (as I have put the case before) that if one say of another that he hath forsworn himselfe in such a Court, that the words are actionable, and in this case judgment was given accordingly.

If

If a man ſay of a woman that ſhee hath a baſtard, an action wil lie for theſe words, becauſe that ſhee is puniſhable by the Statute of 18. of the Queen, cap. 3. at the diſcretion of the Iuſtices, who alwayes inflict a corporall puniſhment upon them, as impriſonment, whipping, or the like. Cook lib. 4. fo. 171 Anne Davis caſe.

Morgan and *Rooks* caſe, *Morgan* ſaid of the Wife of *Rooks* ſhee is a bawde, and keeps a Bawdy-houſe, adjudged that the words were actionable upon a Writ of Error brought by *Morgan*, to reverſe the Iudgment given in the Common Pleas, and judgment was affirmed. Trin. 16. Car. in the Kings bench.

Chambers and his Wife againſt *Ryly* for the ſame words; *Chambers* his wife is a Bawd, and keeps a Bawdy houſe, Adjudged the words were Actionable, and in this caſe it was agreed, that to ſay of a Woman ſhe is a Bawd, will not beare an action; becauſe ſhee is not puniſhable by the Law for it, but to ſay of her, that ſhe keeps a bawdy houſe will be Actionable, for that ſhe is puniſhable by the Law for keeping a houſe of bawdry. Trin. 18. Car. in the Kings bench.

A Prohibition was prayed, becauſe

Hil. 24. Iac. in the Kings. Bench. that *Elizabeth Thorne* had Libelled in the Court *Christian* against *Turnam* for defamation for these words, *Thou art a bawde and dost keepe a bawdy house*, and it was granted by the whole Court because that an action lyes at Common Law for these words.

The reason why an action lyes in these cases, is, because the party may be indicted for keeping of a Bawdy house; and if shee be thereupon convicted, shee shall be imprisoned and most ignominiously Carted, which are corporall punishments.

If a man say of another that he hath forged a Lease, Obligation, Release, or Acquittance, or the like, an Action will lie for these words; because that by the Statute of 5. of the Queen cap. 14. there are great and grievous corporall punishments inflicted upon such offenders, if it be to disturb a Tittle, the punishment is the greater, but not onely in the cases aforesaid, the Offender is to be put in the Pillory, one of his Eares to be cut off, and to be imprisoned for a year.

Mich. 17. Car. in the Kings Bench. *Hawes* brought an action for these words; my Cousen *Hawes* hath spoken against

againſt the Booke of Common prayer; and ſaid it is not fit to be read in the Church, *Heath* Juſtice, was of opinion that the words were actionable, though the offence be onely againſt a penall Law; for the Statute of 1. of the Queen cap. 2. gives a penalty onely for ſpeaking againſt the Booke of Common prayer; but in default of payment thereof, impriſonment. And hee held that all ſcandalous words, which if they were true, would make a man lyable either to a pecuniary or a corporall puniſhment, would beare an action,

But *Mallet*, Juſtice, and *Bramſton*, Chiefe Juſtice, were of a contrary judgment, and their reaſon was, becauſe that if this ſhould be law, it would be a great occaſion to increaſe and multiply actions for words, which the Law labours to ſuppreſs as much as may be, for then all words ſpoken of any man, which if they were true, would ſubject him to a penalty, either by the Common, or the Statute Law would beare an action, as to ſay of a man, that hee hath erected a Cottage, or committed a Ryot, or the like, would be actionable, which the Law will not ſuffer

for

for the reaſon aforeſaid, and judgment was given accordingly.

Mallet Juſtice, in the arguing of this caſe, ſaid, that there was an action then pending in the Common Pleas, for calling of a man Recuſant, and he ſaid that his opinion was, the action was not maintainable: I never heard what became of that Caſe, but I conceive the Law to be with Juſtice *Mallet*; for though there be many penalties and forfeitures provided by Statutes againſt *Recuſants*, yet no corporall puniſhment is given by any of them; not not after conviction.

Hob. Rep. pa. 183. pl. 188.

Thorneton brought an Action againſt *Iobſon*, and laid that he was a Carrier and of good fame, and that the Defendant ſaid of him, that he was a Common *Barretor*. In this caſe the Book ſayes that the Court was of opinion, that if theſe words were ſpoken of a Juſtice of Peace, or publike Officer, or of an Attorney, or the like, that they would beare an Action; by which it is evident the Court did incline againſt the action in this caſe.

Mich. 4. Iac. in the kings bench.

In an action upon the caſe for words the words were, *I am ſorry for thy*

Children, thou art a common Barre-, and I will indict thee for it at the next ſizes, &c. adjudged the words were ot actionable, and by *Yelverton* Ju-ce, the action wil not lie for ſaying at he is a Barretor, no more than r ſaying that he is a Riotor, a peace eaker, or the like, and an action will ot lie for ſaying, that a man is a ogue.

To ſay an Attorney, that hee is a hampertor, will beare an action. But conceive upon the caſe aforeſaid, that ſay of one, who is no Attorney, Ju-ce of Peace, nor other publike Offi-r, that he is Champertor, or a common aintainer of ſuites, will not be actio-ble, nor is it actionable in caſe of the torney ſo ſay that he is a common aintainer of ſuits. Hob. rep. pl. 159. pl. 145. Box and Barnabies caſe.

The reaſon of theſe caſes may bee, cauſe that though any man may bee dicted for being a common Barretor, hampertor, or maintainer of ſuites, d thereupon fined and impriſoned; yet e puniſhment is onely the Fine, and e impriſonment as a conſequent or in-dent thereunto.

And as its ſaid before in *Hawes* caſe

case, if an action should lie in th
cases then in all cases, where a m
shall charge a man with a crime or
fence, for which a man might be ind
ed and fined, an action would l
which would occasion multitudes
suites o this nature, that the L
labours so much to suppress.

*And now I have shewn you what wor
which touch or concern a man in mem
or any corporall punishment, will be
an Action. I shall in the next place sh
you what words in such case will not
actionable*; and that may be in th
cases, either by reason of the doubtf
or indifferent meaning of them, or
the incertainty of the words themselv
or of the persons of whom they a
spoken, or of the subsequent qualifica
on of them; or upon the other groun
and reasons which I have laid do
before:

For we must know (that I may spe
once for all) that all those grounds w
are before set down, where wo
shall not be actionable, which touch
concern a mans life, will agree w
all actions for words whatsoever, wh
th

er that the words touch or concern
man in corporal punishment, as before,
in his Office or place of trust, or in
s calling or function, by which hee
ines his living, or the like, as is
nifested likewise in part before, and
all be more fully hereafter: but to
e point, what words in this case will
ot be actionable.

Box and *Barnabies* case, cited before, say of an Attorney, that he is a Cham. error, will beare an action, but to y that he is a common maintainer of ites, will not beare an action, for ere is maintenance lawful and unlaw. ll; an Attorney may, and ought to aintaine his Clyents cause, and an ttorney may well be said a common aintainer, because he is common to many as will retaine him; thus you , words of a double intendment, shall taken best for the Speaker; for the ords in this case shall not be intended any unlawfull maintinance, but of awfull maintaining of his Clyents ses.

Ho' re. p. 59. l. a. 41.

Stanhope brought an action for these ords: *Master Stanhope hath but one Manor, and that his hath gotten by*

swearing

swearing and forswearing: adjudged words were not actionable, for reason (amongst others) because, for ought appeares hee might be sworn in ordinary Communicati and not in any judiciall proceedi which is not punishable by the La and where the words are of an indi rent meaning, the Law will (as is before) take them the best for the Sp ker.

Pasch. 1c. car. in the Kings. bench.

Smith brought an action for th words; *Thou art forsworn, and taken a false Oath at* Hereford *Assiz* by the opinion of *Jones*, and *Bar Justices* (the other *Justices* absent) action will not lie, because that might be forsworn in ordinary Co munication; otherwise if he had sa that he had taken a false oath in Assizes, for there it shall be intend that he forsworn himself in a judic proceeding.

In a case that I have cited befo which was *Mich.* 41. & 42. of Queen in the Common Pleas: t case was remembred by *Williams*, t arr, *&c.* thou wert forsworn in Kings Bench, he said that in that

he Plaintiff could have no judgment, ecause of the double intendment of he words, for they may be taken that he was forsworn either in the Court, r the Prison, and the best shall be taken or the speaker, *viz.* that he was forsworn n the Prison.

Weaver brought an Action against *Cariden*, for these words, he is detected or perjury in the *Star Chamber*, adudged that the action would not lie, ecause that an honest man may be deected, but not convicted, and every ne who hath a bill of perjury exhibited there against him is detected, here he words do not positively affirm im to be perjured, and therefore not ctionable. Cook. lib. 4. fo. 16. 2.

Thomas brought an action against *Axworth* for these words: *this is John Thomas his writing, he hath forged this Warrant*; adjudged the action would ot lie. Hob. Rep. pa. 3. pl. 4.

Harvy brought an action against *Duckin*, for saying that the Plaintiff ad forged a Writing, adjudged that he words were not Actionable, the eason of these cases is, because of the ncertainty of the words, *Warrant* Hob. Rep. pa. 36. pl.

and

and *Writing*, and as I have given you the rule before, the ſcandall muſt be certaine and apparent in the words themſelve, otherwiſe they will not be actionable.

By *Tanfield* Juſtice, in *VViſemans* caſe, cited before, if a man ſay that one of his Brothers is perjured, no action will lie, becauſe of the incertainty.

In the caſe which I put you before moved by *VVilliams*, *Mich* 41. & 42. of the Queene in the Common Pleas, this caſe was remembred by *VValmſley Juſtice*, one of you forged a *Subpœna* out of the *Chancery*, (*innuendo* the Plaintiffe) he ſaith that judgement was ſtayed in this caſe, becauſe hee which is grieved ought to be certainely defamed. and the (*innuendo*) cannot make the words more certaine: here likewiſe you have examples, that where the perſon is incertaine that is ſcandalized, no action will lie.

Hob. rep. pag. 467. pl. 395. *Powell* brought an action againſt *Winde*, for theſe words, *I have matter enough againſt him, for M.* Harley *hath found Forgery, and can prove it againſt him.* Reſolved the words were not actionable, becauſe they were too generall

generall and utterly incertaine *Britteridges* case, cited before; *Britteridge* is a perjured old knave, and that is to be proved by a stake, parting the land of *H. Martin*, and Mr. *Wright*, adjudged the words were not actionable, because the subsequent words which extenuate the former, and explain his intent, that he did not intend any judiciall perjury, and because that it is impossible, that a stake should prove him perjured; here you have words that are not actionable, by reason of the qualification of the subsequent words; thus you may see, that the ground formerly laid down, may serve as a touchstone for all cases of scandalous words. The third part of that rule or ground which I have laid down before, and which I am now to handle, is this,

Cook lib. 4. fo. 19.

That scandalous words spoken of a man, which touch or concern a man in his Office, or Place of Trust, will beare an action.

Skinner, a Merchant of London, said *Mansfield*, chiefe Baron, that he was a corrupt Judge, adjudged the words were actionable.

Cook lib. 4. fo. 19. a. and 16. a. Cook lib. 4. f. 16. a.

Stucley a Iustice of Peace, brought

an Action for these words, Mr. *Stuth* covereth and hideth Felonies, and is not worthy to be a Iustice of Peace, adjudged the Action would lie, because it is against his Oath, and the Office of a Justice of Peace, and good cause to put him out of Commission, and for this he may be indicted and fined.

Pasch. 7. Iac. in the kings bench.

Pridham and *Tuckers* case, to say of a Constable, that he is a concealer of Fellons, adjudged actionable.

Trin. 36. of the Queen Rot. 223. in the Kings bench.

Stafford, Justice of Peace, brought an Action against *Poler*, for these words: *William Web* being arrested as accessary for stealing his own goods, Master *Stafford* knowing thereof, discharged the said *Web*, by an agreement of 3*l.* to which Master *Stafford* was party whereof 30. s. was to be paid to Master *Stafford*, and was paid to his man by his appointment, upon a Writ of Error brought in the Chequer Chamber if was holden the words were actionable.

Pasch. 37. of the Queene in the kings bench: Rot. 147.

Cotton Justice of Peace, brought an action against *Morgan*, for these words: Hee hath received money of a Theef that was apprehended and brought before him for stealing of certaine sheep

to let him escape, and to keep him from the Goale; adjudged the Action would lie.

Pasch. 4. Jac. in the kings bench. this case commenced Trin. 3. See fo. 18. a.

Morris Gilbert, Justice of Peace, brought an Action against *Adams*, for these words, Mr. *Gilbert* hath done me wrong, in returning the Recognizance of *Podger* in 20. l. where it was taken in ten, and the sureties in 10. l. a peece by the whole Court, the words are Actionable.

If a man say of a Justice of Peace, that he is a common Barretor, Champertor, or maintainer of Suites, the words are actionable.

Mic. 4. Jac. in the kings bench.

Carre brought an action against *Rande* for words, and declared that he was Steward to divers great Lords of their Court Barrons and of the Leetes within their Mannors, and that he was Steward of one *A.* of his Court Barron, and of the Leete within his Manor, the Defendant of this not ignorant said these words, Mr. *Carre* hath put a presentment into the *Juries verdict* against me of 3s. 4d. for sueing of *Peter VVest* forth of the Court contrary *&c.* without the consent of the Jury, by the whole Court the Action

lies, because he doth accuse him of falsity in his office, but by the better opinion, if hee had not alledged in his Count, that he was Steward, the action would have layen.

Sir Georg Moore & Foster's case.

Sir *George Moore* brought an action against *Foster*, for scandalous words and sets forth that he was a Justice of Peace, in the County of *Surrey*, and that there was a suit depending in Chancery, betwixt the Defendant, and one *Richard King*, and that a Commission was awarded to Sir *George Moore*, and others, to examine witnesses in the said Cause, & also to hear and determine it, and that he with the others, dealt in the execution of the said Commission, and that the Defendant said of the Plaintiff these words Sir *George* is a corrupt man, and hath taken Bribes of *Richard King*, and at another time, *King* hath set Sir *George Moore* on Horseback with bribes whereby to defraud equity, justice, and good conscience, resolved that the words were actionable, because that though the Plaintiff be neither Officer nor Iudge, nor is sworn, yet because he is a place of great trust reposed by the King

King in the Plaintiff, and for that he is punishable for bribery or corruption, in the execution of the said Commission in the Court, out of which it issues not deserving (if the words were true) to be imployed in the like Commission, or any other; for these causes the words were held to be actionable: and *Popham, chiefe Iustice*, in this case made no difference, where the Commission issues to one, and where to many; nor where they are nominated by the Court, or where by the party; for in the first case he said, the confidence of the Court is all one; and in the last, though that they be nominated to the Court by the party, yet they shall not be Commissioners without the approbation of the Court.

Sir *Richard Greenfield*, brought an action against *Furnace*, for these words, thou (innuendo, Captaine *Greenfield*) hast received money of the King to buy new Saddles, and hast cozened the King, and brought old Saddles for the troopers. It was objected, that the action would not lie, and it was likened to these Cases which I will cite, because they are worth the knowing. Pasch. 17. Car in the kings bench.

8. Car. in the Kings bench.

8. *Car.* the Major of *Tivertons* case one said of him that the Major had couzened all his Bretheren, &c. adjudged not actionable.

9. Iac. in the Kings bench.

9. *Iac.* in the Kings Bench, the Overseer of the poor hath couzened the poor of all their bread, this was likewise said to be adjudged not actionable but I do somwhat doubt of this case because the words do scandall the Plaintiff in his Office of Overseer, but to this it may be said, that this is an office of burden and trouble, and not of profit.

26. of the Queen in the Kings bench.

26. Of the Queen in the Kings Bench, *Kerby* and *VValters* case, thou art a false knave, and hast couzened my two Kinsmen, adjudged the words were not actionable.

18. of the Queene in the kings bench.

18. Of the Queen in the Kings Bench; Serjeant *Fenner* hath cozened me, and all my kindred, adjudged the words would not beare an action.

See fo. 23. b. 24. a.

Out of which case we may (by the way) observe this for Law; that if a man say of another (without any precedent communication or his Office place of trust, or profession) that he is a couzening, or a cheating knave, or

thi

that he hath couzened any man thus, and thus, that no action will lie for such words generally ſpoken, otherwiſe if they be ſpoken in reference to a mans office, place of truſt, or profeſſion.

And in the principall caſe, it was reſolved by *Heath*, Juſtice, and *Bramſton* Chiefe Juſtice, (the other Juſtices being abſent) that the action would lie, becauſe the words did ſcandall him in his place of Truſt, and they ſaid it was not materiall what imployment the Plaintiff had under the King, if by the ſpeaking of theſe words he might be in danger of loſing his Truſt or imployment.

Bray brought an Action againſt *Hayne*, and declared that where he had been Bayly to Sir *William M.* Kt. for three years laſt paſt of his Land in *C.* and had the ſelling of his Corn and Grain, the Defendant ſaid theſe words unto him, thou art a couzening knave, and thou haſt couzened me in ſelling falſe meaſure in my *Barley*, and the Country is bound to curſe thee for ſelling with falſe meaſures, and I will prove it, *&c.* adjudged the words were not Hob. rep. pa. 104. pl. 93.

not actionable, for every falsehood charged upon a man in his private dealing, will not be actionable. And in this case it doth not appeare, that these words were spoken of any sale of Corn, whileſt he was in his Office of Bayliff, nor of his masters Corn, nor to the damage of his Master.

Note Reader this case agrees with the cases immediately before.

But it was agreed in this case, that if he had been a common Rider or Badger, and had been charged with selling false measure, it would have born an action, which is evident because it is a slander to him in his function by which he gaines his living.

And my Lord *Hobart* puts this case, if a man (saith hee) have a Bayliff, to whom he commits the buying and selling of his Corn and Grain, and gives him the greater wages in respect of that trust and imployment, and charges him to have deceived him in his Office, by buying and selling of false measure, to his loss or damage, this will beare an action, because this discredits him in his office, and may not only, because to put him out of that service, but to be refused of all others this case is evident Reader, because the

words

words do charge him with selling with false measure, whilest he was in his office.

In the debate of Sir *George Moore*, and *Fosters* case before cited, these cases were put by *Williams*, *Justice*, if one say of an Arbitrator, that he hath done corruptly, and hath taken bribes, no action will lie, the reason may be, because being chosen by the parties themselves, and not being sworn, such corruption is not punishable by Law, nor can the countermanding of his power be any damage to him.

But if a man say of a Weyer in a Market, or Faire, appointed to wey betwixt the buyer and seller, that he hath done corruptly, and hath taken bribes to make false weits, an action lyes for these words, because he is an Officer.

Miles Fleetwood, Generall Receiver of the Court of Wards for the King, brought an action against *Curbey*, for these words; Mr. *Deceiver*, hath deceived and couzened the King, and dealt falsly with him; adjudged the words were actionable. Hob. rep. pa. 375. pl.

The like Case, where one said of an Auditor

Auditor, that he was a Fraudator, was adjudged actionable

4. E.6.br. Action upon the case 112.

An action was brought for calling of the Plaintiff false Justice of Peace, *vel his similia*. I do conceive that these words are not actionable, because though they doe reflect upon his Office, yet they are too generall. But the Booke saith that these words (*his similia*) were ordered to be expunged or drawn out of the Book, for the incertainty; and well they might indeed; for certainly if a man shall bring an action against another, and shall declare that the Defendant said of the Plaintiff, that he was a Rogue and a Theefe, or words lik these, or to this effect, the Action will not lie, because the words upon the very face of the Declaration are utterly incertaine

The Law affords very few Cases (*Reader*) where words shall not be actionable that scandall a man in his office or place of trust upon those grounds which I have formerly laid down.

But note this, that all those grounds (as I have said before) are as a touch stone for all actions for words whatsoever, and therefore if you meet with

scandalous

ſcandalous words, which touch a man in his office or place of truſt, examine them by thoſe rules, if they be too generall, or not ſufficiently poſitive, or if of a double intendment, or doubtfull in meaning, or incertaine in themſelves, or the perſon of whom they are ſpoken or the like, in ſuch caſes they wil not be Actionable, and therefore thoſe Rules ought eſpecially to be obſerved.

The fourth part of that general rule which I have laid down before, and which in courſe I muſt now ſpeake of, is this,

That words ſpoken of a man, which ſcandall him in his profeſſion or function by which he gaines his living, will beare an action.

Hob. rep. pa. 13. pl. 17.

Yardleys Caſe, there being a communication or diſcourſe of him in his profeſſion of Attorney, one ſaid that he was a bribing knave.

Hob. Rep pa. 359. pl. 145.

Boxes Caſe, one ſaid of him, being an Attorney, that he was a Champertor.

Cook lib. 4. f. 16. 1.

Byrchlyes Caſe, an Attorney; there being ſpeech of his dealing in his profeſſion, one ſaid to him, you are well known to be a corrupt man, and to deale

deale corruptly, adjudged in all these cases, that the words, because they scandall a man in his profession by which he doth acquire his living, were actionable.

Hob. rep. p. 183. pl. 188. So by the opinion of the Court in *Thornton* and *Iobsons* Case, cited before, to say of an Attorney that he is a common Barretor, will bear an action.

Mic. 2. Iac. in the kings bench. *Dawtry* an Attorney in the Court of *Ipswich*, brought an action against *Miles*, for these words; *Dawtry* is a knave, and a couzening knave, and he did take Fees of both hands in a suit between me and *Green*, and by knavery suffered me to be condemned at *Ipswich* at *Greens* suit wilfully, being Attorney for me; the only words held considerable in this Case, were these; the Defendants saying that the Plaintiff took fees of both hands, and whether this would amount to as much as if he had said the Plaintiff was an ambidexter, was the question.

Popham, and *Yelverton*, *Justices*, that the action would not lie, because that the words in this Cause may have a double intendment, for it may be intended that hee took fees with both hands

hands lawfully, but if he had said that he was an ambitexter, an action would lie, for this is *vo cartis*, and cannot be otherwise intended.

Fenner, and *Williams, Iustices*, that the action would lie, for that the words amount to as much as *ambidexter*, and are the english of it, and a direct affirmation and no Metaphor, if a man say of another that he hath the Pox, no action will lie, because it shall be intended the small Pox. but if a man say of another that he hath been laid of the Pox, there an action will lie, because it is the phrase for the French Pox.

I do rather incline to the latter opinion, because (as hath been said) these words are but the english and proper meaning of *Ambidextory*; and to construe them to a taking Fees with both hands, would be to make a construction against the expres meaning of the words, which I conceive the Law will not permit: and the rather as this case is, because thath he doth charge him with knavery in suffering of him wilfully to be condemned in a suit being his Attorney: I do not find any judgement in the case, therefore I shall

leave

leave it to the judicious *Reader*.

Pasch. 24. of the Queene in the kings bench.

Phillips Parson of *D.* brought an action against *Baddy* for these words, thou hast made a seditious Sermon, & moved the people to sedition this day: in this Case, notwithstanding the first part of the words were utterly adjective, & the latter were but a motive to sedition, and it doth not appeare that any thing ensued thereof; yet because they scandaled the Plaintiff in his function, it was resolved that they were Actionable.

Cook lib. 4. fo. 19. 6. 2. 6, Dyer 72.

If a man say of a Merchant, that he is a Bankrupt, or that he will be a Bankrupt within two days, the words are actionable.

Hil. 3. Iac. in the kings bench. Rot. 855.

Edmunds a Merchant, brought an action against *Whetstone* for these words, He would prove that Master *Edmunds* had been a Bankrupt, and had agreed with his Creditors for a Noble in the pound. It was moved in Arrest of judgment by *Hitcham*, that the Action would not lie, because that the speech, refers to a time past, and though that he were once a Bankrupt, yet it may be now that he is of credit: But it was resolved that the Action would

would lie, because that it was an impeachment of his credit, for if he were once a Bankrupt, every man will be the more suspitious and fearefull of him.

A Merchant brought an action for calling of him couzening knave; by *Jones*, and *Barkley*, *Justices* (the other Justices absent) the action will not lie, because that the words are too generall But if they had touched him in his profession, they would have born an action. And therefore to call a Merchant Bankrupt, will beare an action; but to say of a Lawyer that he is a Bankrupt, will not be actionable; the reason may be, because that a Lawyer cannot be a Bankrupt, for that he doth not acquire his living, by buying and selling, as the Statutes speake,

Pasch: 15. Car in the kings bench. this agrees with the former cases, see fol 21. a. b.

Jones, *Justice*, in the former Case, put this Case, there being a communication of Serjeant *Heale* in his profession, one said of him these words, he hath undone many, adjudged that the words were actionable, because they touch him in his profession:

Trin. 37. of the queen in Cam. Ioace. Osbeston and Stanleys case.

A Shoomaker brought an action against one, for calling of him Bankrupt, adjudged upon a Writ of Error in the

Chequer

Chequer Chamber, that the action would lie.

Pasch. 15. Car. in the Kings bench.

Axe a Dyer, brought an action against *Moode* for these words, thou art not worth a Groat, and avers that in such a place where they were spoken they have the common acceptation, and equivalent to the calling of a man a Bankrupt, resolved that the words of themselves were not actionable, because that many men in their beginnings are not worth a Groat, and yet their credits are good in the world. And that the averment are idle, and could not make them actionable, because that the words have a plain and proper significant meaning of their own, and therefore cannot be taken to another sense and meaning:

Averrement.

A Journeyman and foreman of a Shoomakers Shop, brought an Action for these words, it is no matter who hath him, for he will cut him out of Doors and avers that the common acceptation and intendment of these words *inter calsearios*, is that he will beggar his Master, and make him run away and avers a particular damage by the speaking of them, resolved that the action would lie.

Pasch. 15. Car. in the king's bench.

Averment

Note

[illegible] *Reader*, here the averment is good, because the words, cutting out of Doors, are of a doubtfull meaning and intendment, and so may be aided by an averment, so that the difference between this and *Axes* case cited before, is evident.

Knightly, an Attorney, brought an action against *Childoner*, for these words, spoken to his Sonne, *my Father was not cast over the Barre, as thy Father was*; the parties were at issue, and in this case, *Walmsly*, *Justice*, said, that he conceived the words were not actionable. Trin. 41. of the Queen in the common pleas

Box and *Barnabies* case before, the defendant said of the Plaintiff, being an Attorney, these words (amongst others which were held actionable) that hee would have him thrown over the Bar the next Term; in this case (agreeing with the opinion of *Walmsley* before) the opinion of the Court was, that these words were not actionable, because of the incertaine sense and meaning of them. Hob. rep. Pa. 159.

Dickes a Brewer, brought an Action against *Fenne*, and declares that the Defendant having communication with

some of the Customers of the Pla-
tiff concerning him in his profession
said these words of him, *I will give
peck of Malt to my Mare, and lead her
the Water to drink, and shee shall piss a
good Beere as* Dicks *doth brew*; adjudg-
ed the words were not actionable, be-
cause that they are Comparative only
and besides they are impossible, and
therefore, they can be no scandall to the
Plaintiff.

In this case it was said by *Rolls*, Ser-
jeant, that it had beene adjudged acti-
nable, to say of Brewer that he Brew
naughty beere; which was agreed by
the Court, because that he is presen-
ble in a Leete for it.

And likewise in this case it was said
by *Bartley*, *Justice*, that where one said
of a Lawyer, that hee had as much
Law as a Munkey, that these words
were adjudged not actionable, because
that he hath as much Law, & more also
than the Monkey hath: but if he had said
that he had no more Law than a Mon-
key, these words would be actionable.

One said of a Councellor at Law, that
he was a Concealer of the Law, adjudg-
ed actionable.

Sanders

Sanderson and *Rudds* case, the Plaintiff being a Lawyer, and standing for the Stewardship of a Corporation, the Defendant said of him, that he was an ignorant man, the Court in this case declined that the words were Actionable. Tr in. 17. Car. in the common pleas.

Snag, a Councellor at Law, brought an action against *Peter Gray*, for these words, *Go ye to him to be of your Counsell, he will deceive you, he was of Counsell with me, and revealed the secrets of my case.* Adjudged the words were actionable because that this cannot be intended of a Lawfull revealing to the Judge, by way of motion, before whom it was tried, for this were a commendation for him, but the words are to be taken as they were spoken, that is *simpliciter*, and *uno habitu*, and then his intentions appeares contrary, for he said before, he will deceive you, *&c.* Also the Plaintiff declared that they were spoken *Malitiosè*; And these words revealed the secrets, *&c.* are to be intended revealed to those from whom they ought to be concealed, and every man to make the best of his cause, and therefore *secreta sua non sunt revelanda*; Trin. 13. of the Queen in the Kings Bench. Rot. 114. Cooks entries fo. 22 a. b.

and also the words touch the Plain
in his art and science, which requ
men of great trust and confidence,
so the words before being spoken
derogation of the confidence and fid
ty of the Plaintiff, are a great slan
to him; for these causes judgment
given for the Plaintiff.

Upon this case I do conceive, t
to say of a Lawyer generally, that h
revealed the secrets of his Cly
cause, will beare an action.

Pasch. 12. Ca. in the kings bench. Pa ch. 17. Car. in the comon pleas.

One said of a Doctor of Physick, th
he was a Mountebank, an Empe
and a base fellow, adjudged the wo
were actionable.

Paine brought an action upon t
case for words, and shewed how tha
was a Farmer and used to sow his
and to sell the Corn upon it, and
this *per majorem partem*, he maint
his Family, and that the Defend
said these words of him, hee keep
false Bushell, by which hee doth ch
and cozen the poore, and avers
lots of his custome by the speaking
these words, in this case it was
ved by *Gotbolt*, Serjeant, in arrest
judgment, that the words were
actionable

actionable, because it doth not appeare that the plaintiff kept a false Bushell, *Scrivner*, knowing it to be false.

But it was resolved that the words were actionable, for (as this case is) it must of necessity be taken, that hee kept a false Bushell, knowing it to be false, for otherwise it could be no cozenage.

And this case plainly differs from the case, where an action was brought for saying, that the plaintiff kept false Waites generally: without further saying in this case, the words were adjudged not actionable, because that it doth not appeare that he used them, or knew them to be false.

Hill. 6. of the Queen in the common Pleas. adjudged and after affirmed in a Writ of Error, Mich. 26. & 27. of the Queen in the King, Bench. Rot. 35.

The fifth part of that Generall Rule, which I have laid down before, and which now I am in course to speak of, is this, *That words spoken in scandall of a mans Title or which tend to a mans disinheritance, will beare an action.*

Henry Mildmay, brought an action against *Roger Standish*, for saying, and publishing, that certaine Land was lawfully assured to one *John Talbot* and *Oliff* his Wife, for a 1000. years, and that they of the interest of the Term were

lawfully poſſeſſed, whereas in truth there was no ſuch matter, and ſo to ſlandring of the Eſtate and Title conveyed to his Wife by certain indentures, and ſhewed all incertaine, and how hee was prejudiced by the ſaid words, he brought the ſaid action.

The Defendant pleaded a proviſo in the ſame Indentures, and the ſaid limitation for 1000. yeers, according to the ſaid Proviſo, as he pretended (whereas in truth the ſaid limitation was void in Law) by force of which he ſaith, that the ſaid *Oliffe* had an intereſt for a thouſand yeers, and ſo juſtified the words, upon which the plaintiff demurred: adjudged that the action would well lie; though that the ſaid *John Talbot* and *Oliffe* his wife, had ſuch a limitation *de facto* for a thouſand yeers, which occaſioned the Defendant being unlearned in the law, ſo to publiſh it, yet for that he hath taken upon himſelf notice of the Law, and medled in that which did not concern him, and hath affirmed and publiſhed that *Oliffe* had a good eſtate for a thouſand yeers, in ſlander of the Title of the plaintiff, and to his prejudice, for this cauſe

cause judgment was given for the plaintiff.

Sir *Thomas Gresham* Knight, brought an action against *Robert Cunsley*, Clark, and shews how his Father was seized of divers Mannors and Lands, and amongst them of the Mannor of *Titte-sey*, which he did by his will amongst other lands devise to *Beatrice* his wife, for life, the remainder to the plaintiff and the heirs males of his body begotten, and had issue *William Gresham* his eldest sonne, and the plaintiff the younger, and dyed, and that *William* after his death confirmed to *Thomas* his estate, and that *Beatrice* dyed, and the plaintiff entred into the said Mannour of *Titteſey*, and further shews, that *William* had issue, *Elizabeth* his heire apparent, and that the Plaintiff had a Wife, and sons and daughters, and that he had an intent to convey some of his lands to his wife for her joynture, and some to his Sons and daughters for their advancement, and to exchange parcell with others, and to make a Lease of another party, but doth not shew to whom, and that the Defendant *premiſſorum non ignarus* in de-

Hill. 3. Iac. Rot. 519. B.R. Gookes Entries. fo. 3[illegible]. 4.

rogation of the Title and Estate of the plaintiff, said these words to the plaintiff; As I before said to your Wife, I say now that your brother was a fool and never born to doe himself any good, for that hee could not hold his hands from ratifying and subscribing to his Fathers Will; but yet notwithstanding, I have that to shew in my house, that if his heire do not any such act as hee hath done, it shall bring her to inherit *Titresey*, by which words he saith, that he was hindred in the conveyances aforesaid.

In this case it was resolved, that the action would not lie; first, because the the words themselves are not scandalous to the Title of the plaintiffe; the words considerable are onely these that he had that in his house, &c, that shall bring her (that is, the Daughter and heire of *William*) to inherit *Titresey*, which apparently feasible, for the plaintiff being Donee in Taile of the gift of his Father, the Daughter and Heire of the eldest brother is inheritable to the Revertion in Fee, and so no prejudice to the plaintiff, to say he hath that which shall bring her to inherit. Besides

the action will not lie, be-
cause he doth not shew any special
damnification by the speaking of these
words, as that he was upon a sale of
these lands to *I. S.* who by reason of
the speaking of these words, refused to
buy them, or the like; and in this case
there was nothing but a purpose, or in-
tent for conveying some of these lands.

And *Popham*, *Justice*, said, that there
is a difference when a man declares his
opinion of the Title of another to land,
this is nothing, and he shall not be pu-
nished for it, but if he doth so publish
it, that it comes to the hearing of any
one that intended to buy the Land, in
such case an action lyes, but he must
shew specially in his Count, in what he
was damnified, otherwise the action
will not lie.

Banister brought an action against *Banister*, for that the Defendant said of the plaintiff (being Sonne and Heire to his Father) that he was a Bastard, resolved, that the action would lie, for this tends to his dis-inherison of the Land which discends to him from his Father. Trin. 25. of the Queen in the Kings Ben.

But in this case it was resolved, that

if

if the defendant pretend that the
tiff was a Baſtard, and that he him
was next heire, there no action lyes.

So if a man ſay, that another hath
right to land, an Action lyes; but if
Counſeller ſay that his Clyent hath
better right, this will not beare an
on.

Mich 3. *Jac.* in the *Kings Bench*, *
Curiam, if one ſay to me, that I
Baſtard, if I have Land by deſcent,
ſhall have an action upon the Caſe,
though that I have land by deſcent,
this tends to my diſ-inheritance, if I
in *Court Chriſtian* for it, a prohibi
lyes, becauſe that the tryall there
be to my diſinheritance.

And if one ſay to another, that he
baſe born, an action will not lye:
the words ſhall be taken in *meliori ſ*
ſu. And if one ſay to his Sonne, that
is a Baſtard, or a Leoper, hee ſhall
have an action, neither in *Court Chriſt*
nor at common Law.

Cook lib. 4. fo. 18. Sir *Gilbert Gerrard* brought
action againſt *Mary Dirkinſon*,
declares how that he was ſeized
certaine lands in fee, and that he wa
communication to demiſe them

Ra

Egerton for 21. years for 200.l. and 100.l. rent per annum; and that the Defendant (premissorum non curat) said, I have a Lease of the Manner and Castle of H. (which was the same lands) for ninety years, and shewed and published it, &c. by reason of which words (he saith) the said Ralph Egerton did not proceed to accept the Lease, &c.

In this case it was resolved, that no Action would lie for the said words, though they were false, because that the Defendant pretended an interest in the said land.

So if the Defendant had affirmed and published, that the Plaintiff had not any right to the said Land, but that she her self had right to it, in this case, because that the Defendant pretends Title to it, though, that in truth, shee hath not any, yet no Action lyes. For if in such case an Action should lye, how could any one make claime or Title to any land, or commence any suit, or seek, advise and Councell, but he should be subject to an Action; which would be very inconvenient.

Agreeing with these cases, in 2. E. 4. 2. E. 4. 5. and 15. E. 4. 32

and 15.E.4. it is resolved, that no ac-
on upon the case lies against one f
publishing another to be his Villeine.

The six part of that generall Ru
which I have laid down before, and a
now to speak of, is this,

*That scandalous words which tend t
the hinderance or loss of a mans ad
vancement, or preferment, or whic
cause any particular damage, will bea
an action.*

Cook 11. 4.fo.16.b. *Anne Davis* brought an action s
gainst *Gardiner*, for these words, spoke
to one B. a Suter to the Plaintiff
and with whom a marriage was almo
concluded; I know *Davies* Daughte
well, shee did dwell in Cheapside, an
a Grocer did get her with Childe, &c
and shee saith, that by reason of th
speaking of these words, the said
utterly refused to take her to Wife, s
that thereby she lost her advancement
&c. adjudged that the action woul
lie, because that if she had a Bastard she
was punishable by the Statute of 18. o
the Queen, cap. 3.

But it was in this case further reso
ved, that if the Defendant had charge
the Plaintiff with base incontinency
only,

ady, yet the action would have laine, by reason that by the said slander, she was defeated of her advancement in marriage.

And it was in this case likewise resolved, that if a Divine be to bee presented to a Benefice, and one to defeat him of it, saith to the Patron that he is a Heretique, or a Bastard, or that he is excommunicated, by which the Patron refuses to present him (as hee well might if those imputations were true) and hee loses his preferment, that in this case an action will lie.

Dame Morrison Widdow, brought an action against *William Cade* Esquire, and declares that shee was of good fame, &c. And that *Henry, Earle of Kent* was in speech and communication with her for marriage, the defendant *premissorum non ignarus*, said these words, *Arscot* hath reported that hee had the use of the Lady *Morrisons* body at his pleasure, *ubi revera, Arscot* never reported it, and alledged that the Earle of *Kent* upon the hearing of the words forceased his suit, by which she lost her advancement, *&c.* upon not guilty pleaded, it was found for the Plaintiff, and in this

Hill. 4. Jac. in the Kings Bench. Rot. 1153.

this case it was resolved, that though the words charge the Plaintiff with bare inconstancy only, which is no offence Ecclesiasticall, and not even not punishable by our Law, yet because of the temporall damage, *viz.* the loss of her advancement in marriage, the Action would well lie, which agrees with the judgment in *Anne Davies* case.

Trin. 17 Car. in the com. on pleas.

Sanderson and *Rudds* case cited before; the Plaintiff being a Lawyer stood for the Stewardship of a Corporation, and the Corporation being assembled to elect a Steward, the plaintiff was motioned to them; whereupon the Defendant being one of the corporation, said to his Brother, he is an ignorant man, and not fit for the place and the plaintiff sees that by reason of these words, they did refuse to elect him Steward, so that he thereby lost his preferment, &c. the Court in this case inclined that the Action would lie.

And now I am fallen upon a question very necessary to be resolved, and that is,

What words are Actionable of themselves only, and what are not actionable

without

without alledging of a particular damage; take this for a Rule, That ſcandalous words which touch or concern a man in life, liberty, or member, or any corporall puniſhment, or which ſcandall a man in his office or place of truſt, or in his calling, or function, by which he gaines his living, or which charge him with any great infectious diſeaſe, by reaſon of which hee ought to ſeperate himſelf, or to be ſeperated by the Law from the ſociety of men; all ſuch words will beare an action, without ſwearing or alledging of any particular damage by the ſpeaking of them.

Yet I do not deny, but that it is beſt to alledg a particular damage, if the caſe will beare it; and it is uſuall ſo to doe in theſe caſes, for the increaſe of damages.

Bramſton, chiefe Juſtice, in the arguing of *Hawes* caſe, which I remembred before, took this for a Rule, that if words did import a ſcandall of themſelves, by which damage might accrue, in ſuch caſe the words would beare an action without alledging of a particular damage. Mich. 17. Car. in the kings bench.

But now on the other ſide, words which doe not touch or concern a man in any

of

of the cases aforesaid will not beare an Action, without alledging of a particular damage.

Words spoken in scandall of a man's Title, will not beare an action, without averring of a particular damage, as appeares by the cases before cited upon that ground.

Cook lib. 4. fo. 15. b.

There are many words, which are words of passion, and choller only, as to say of a man, that he is forsworn generally, or that he is a villain, or a rogue or a varlet, or the like, these words are not actionable of themselves; yet we do conceive that in these cases an action will lie, with an averment of particular damage, by reason of the speaking of them.

Averrement.

Co. lib. 4. fo. 17. a. & fo. 2. a. 27. H. 8. 4 the Regist. 1 fo. 54.

There are other words which concern matter meerely Spirituall, and determinable, in the Ecclesiastical Court only: as for calling of a man Bastard, a Heretique, a Schismatique, Advowtrerer, a Fornicator, for calling of a woman a Whore, or charging her with any particular act of incontinency, or the like, yet in these cases with an averment of a particular damage, an action will lie at the Common-Law

it is adjudged in *Anne Davis* case cited before.

By *Popham, Chiefe Iustice*, if one say of a Woman that is an Inholder, that she hath a great infectious disease, by which she loses her guests, an action will lye; this must be taken with an averment of that particular damage, otherwise an Action will not lie, unless the disease be such, for whcih she ought to seperate her self, or to be seperated by the Law from common society, as I shall shew you hereafter. Cook lib. 4 fo. 171.

Ax and *Moods* case cited before, the plaintiff being a dyer brought an action for these words, thou art not worth a Groat, adjudged that the words were not actionable, because that many man in his beginning is not worth a Groat, and yet hath good credit with the worl Pasch. 15. Car. in the kings bench.

But in this case it was agreed that if the plaintiff had averd specially that he was thereby damnified, and had lost his credit so that none would trust him, with such an averment the action would have layen.

In the case of the Foreman of a Shoemakers shop, cited before, for *Mich.* 15 Car. in the kings bench.

these words; it is no matter who h
him, for he will cut him out of do
the Plaintiff averr'd that the Comm
acceptarion of these words, *inter Cal*
areer is, that he will begger his Mas
and make him run away; and shew
speciall damage by the speaking
these words, and it was adjudged t
the Action would lie, which I conc
was only for the particular dam
for to say of a Servant that he d
Cheat, Couzen or defraud; or that
will begger his Master, or the like,
not bear an action, without an averm
of a particular damage.

And in this case it was said by
Court, that for some words an ac
will lie, without an averment of
particular damage, as for calling
man Theefe, Traytor, or the like,
some words will not bear an ac
without an averment of a parti
damage,

As if a man shall say of another
he kept his wife basely, and st
her, these words of themselves wil
bear an action; but if the par
whom they were spoken, were
maried to another, and by these w

is hindred; in such case, with an averment of the particular damage, an action will lie.

So likewise in the case of *Dickes* and *Fen*, which I also cited before, where one said of the Plaintiff being a Brewer, that he would give a peck of malt to his Mare, and lead her to the water to drink, and she should piss as good Beere as the Plaintiff Brewed; it was resolved that the words themselves were not actionable, because of the impossibility of them. But it was agreed by the Court, that if there had been a speciall damage alleadged, as loss of Custome, or the like, the action would have lain. Mic. 15. Car. in the Kings bench.

Hawes case cited likewise before one said of him, that he had spaken against the book of Common Prayer, and said that it was not fit to be read in the Church; for which he brought his action, & shewed how that by reason of the speaking of these words by the Defendant, he was cited into the Ecclesiastical Court, & had paid & expended severall sums, &c. adjudged that the words themselves were not Actionable, because if they had been true, *Mich.* 17. Car. in the kings bench.

they charge him only with an offence againſt a penall Law which doth not inflict corporall puniſhment, but for non payment of penalty.

But it was reſolved that for the particular damage the action would lye; and of this opinion were *Heath*, and *Mallet*, Iuſtices.

But *Bramſton* Chief Iuſtice, (the other Iuſtice being abſent) was of a contrary judgment, and he took this for a rule, that if the words did not import a ſcandall in themſelves (as He conceived they did not in this caſe) in ſuch caſe the averment of a particular damage ſhould not make them actionable.

But with all due reſpect to the judgment of this learned Judg, I do conceive that the words are in themſelves ſcandalous; becauſe that they do charge a man with faction and oppoſition to eſtabliſhed Law, and ſetled Government.

But if they were not in themſelves ſcandalous, yet I conceive (according to the judgment of thoſe reverend Judges) that for the damage only the action wil lie, for otherwiſe the plaintiff

tiff shall suffer through the default of the defendant, and he without remedy which I conceive the Law wil not permit, but I submit this to the judgment of the learned Reader.

Lastly, words which charge a man with any dangerous infectious disease, by reason of which he ought to seperate himself, or to seperate by the law, from the society of men, will bear an Action.

If a man say of another that he hath the French Pox an action will lie.

Taylor brought an Action against *Packins* for these words, thou art not worthy to came into any honest mans company, thou art a Leoprous knave, and a leoper; adjudged that the words are actionable, because that it is cause of separation by the Law of God, and man. Cook. lib. 4. fol. 17. a.

So by *Tanfield* Justice, to say that one is infected with the French Pox, will bear an action, but to say that one hath the Falling Sickness, is not actionable, except that it disables him in his profession, as to say that a Lawyer hath the falling sickness, an action lieth, because that it disableth him of his business. Hill 4. Iac. in the king. Bench.

Vpon this ground I conceive, to say of a man that he is infected with the Plague, will bear an Action, because that also is a dangerous infectious disease, and a cause of separation

I have now finished my task of shewing you what words are Actionable in the Law, and what not. And yet Reader I shall not end this Treatise here, for there are many things not worthy the knowing (which I could not aptly introduce before) & therefore not to be omitted.

There are two things or grounds very remarkable in all Actions upon the case for words.

First Causa dicendi, the ground or occasion of the speaking of the words: And that must be collected out of the precedent discourse or communication concerning the Plaintiff. or else out of the Relation that the words themselves have to the Defendant, or otherwise as the ease shal fal out to be.

The next thing is the affection of the Speaker, that is to say, whether the words were spoken Ex malitia, or not?

First, for the first *Causa dicendi*, the ground or occasion of speaking of the words. And

And here I shall lay down this as ground, *that scandalous words which themselves singly would bear an acti. yet being joyned to other words or discourse, and so Causa dicendi, or the subject matter being considered, they will not bear an action* For *sensus verborum est causa dicendi accipiendus est, &c:* And words must ever be construed according to the subject matter. Cook lib. 4. fo. 13 b.

Henry Lord *Cromwell* brought an Action *de scandalis magnatum* against *Edmund Denny*, Vicar of N. in the County of *Norfolk*, &c. for these words. It is no marvell that you like not of me, for you like of those that maintain sedition against the Queens proceedings: the Defendant pleaded a speciall justification, in effect thus: that the Defendant being Vicar of N. the Plaintiff procured *J. T.* and *I. P.* to preach there, who in their Sermons inveyed against the Book of Common Prayer, and affirmed it to be superstitious, wherefore the Defendant inhibited them for they had no licence nor authority to preach, yet they proceeded through the encouragement of the plaintiff, and the plaintiff said Cook. ubi supra.

to the defendant, thou art a false vain I like not of the, to whom the Defe said, It is no marvell though you like not of me, for you like of those (meaning the aforesaid *J. T.* and *J. D.*) that maintain sedition (meaning the seditious Doctrin,) against the Queen proceedings.

In this case it was adiudged, that the justification was good, for though the in this case taking the words singly of themselves, as the plaintiff hath declared, they might have been actionable, because that then they could not be construed otherwise than of a publike and violent sedition, as the word in selfe doth import.

Yet now the ground and occasion of the words appearing, by which it is evident, that the defendant did not intend any publike or violent sedition, but only that the seditious doctrine against the proceedings of the Queen, *viz.* the statute *de anno primo*, by which the Common prayer was established, and God forbid (saith the Book) that words by a strict and Gramatical construction should be taken contrary to the manifest intent of the Speaker

there

therefore it was ruled upon the coherence of all the words, that the justification was good, and so the words not actionable.

And in this case it was ruled, that if a man bring an action against another for calling of him murderer, and the Defendant will say that he was speaking with the plaintiff of unlawfull hunting, and that the plaintiff confessed that he had killed divers hares with certain Engines, to whom the Defendant answered and said, Thou art a murtherer (meaning the killing of the said Hares) that this was a good justification; and so upon the whole matter the words not actionable.

Cook lib. 4. fo. 14. 2

Byrchely an Attorney, brought an Action against one, for these words, you are well known to be a corrupt man, and to deale corruptly; resolved that the words were actionable, but in this case it was ruled that if the precedent speech had been, that *Byrchley* was a Usurer, or that he was executor of another, and would not perform the testament, and upon this the defendant had said these words upon a speciall justification, as aforesaid, they

would

would not bear an action.

Cook lib. 4. fol. 17. a. *Banister* and *Banisters* case resolved, that if I call an heir a Bastard, an action will lie: but if the Defendant pretend that the plaintiff is a Bastard, & that he is next heir, there no Action will lie. The reason of this is plain, because *causa dicendi*, or the occasion of speaking of these words, is not to defame the Title of the Plaintiff, but only to justifie the title of the Defendant, and it is lawfull for any one to speak in justification of his own Title, though he do thereby seem to slander the title of another man; agreeing with this case is *Gilbert Gerrards* case cited before.

See fo. 16 p. 27. a. Pasch. 15 Car. in the king's bench. *Melton* brought an action against *Clapham*, and declares how that there being a cause pending in this Court, betwixt the plaintiff and Defendant, upon reading of certain Affidavids of the Plaintiffes in Court the Defendant said openly, *in presentia & audita Justiciariorum, & juris peritorum, &c.* There is not a word true in the Affidavids, which I will prove by 40. witnesses, and alledges that the words were spoken *malitiose*, yet

et it was resolved by the Court that ey were not actionable, because as hey are usuall words upon the like ccasion, so they are spoken in the de-ence of the defendants cause, and this ase was likened to the case of the Bastard immediately before.

And *Bartley Justice*, said, that there re two things mainely considerable n words, the words themselves and *causa dicendi*, and therefore sometimes hough the words themselves would ear an action, yet *causa dicendi* being onsidered, they will not be actiona-le as in this case.

Now as my Lord *Cook* ses in *Crom-ells* case before remembred, so I say you. In these cases, *Reader* you may ke notice of an excellent point of urning in actions for sl nder; to ob-rve the cause and occasion of speak-g of them, and how this may bee eaded in excuse of the Defendant. Cook lib. 4. fo. 14. a

But before I pass this, *Reader* I shall bserve unto you that the Dr fendant Cook, lib. 4. fol. 13. b. 14. a these cases might take the generall sue, if he would, *viz.* that he is not ilty, *modo & forma*, as the plaintiff th aledged, and so given in evidence

the

the coherence and connection of t
words, and the occasion of speak
of them and have them specialy fou
if it be conceived to be necessary.

Or the defendant may (as the c
shall require) justifie the speaking
other words, and traverse the speak
of the words in question, and so h
wise upon the evidence have t
words specially found,

And hereupon, *where the speciall f*
ding of the Jury wil warant the Decl
ration of the Plaintiff, and maintain
action, and where not, may be very qu
tionable, and worthy the knowing.

The defendants plea is, that wch m
guide us in these cases, if he plead n
guilty the words are (as I have said
fore) *modo & forma*, as the Plain
hath alleadged, and if he justifie t
speaking of other words, and trave
the words in question, doth it th
absque hoc, that he spake the words
the Declaration *modo & forma*, as t
Plaintiff hath alleadged,

Now where the words that
found by the Iury shall be said to
gree *modo & forma*, with the word
the Declaration, this is the questi
be

re I ſhall lay down this ground.

That where the words that are found not agree with the Declaration in the ſubſtantiall and eſſentiall form, that in ſuch caſe, they do not warrant the Declaration: But if they do agree in the ſubſtantiall and eſſentiall form, though they agree not in every word, yet they do well warrant the declaration, and by conſequence maintain the Action.

Sydenham againſt *Man* for theſe words; If Sir *John Sydenham* might have his will, he would kil all the true ſubjects in England & the King too. and he is a maintainer of papiſtry, and rebellious perſons; the defendant pleaded other words, and traverſed the ſpeaking of the words, *modo & forma*, &c. the jury found that he ſpoke theſe words, viz. I think in my conſcience, that if Sir *John Sydenham* might have his will, he would kil &c. and find all the ſubſequent words before alledged and whether the defendant were guil. of ſpeaking of the words in the manner and form as they are alleadg. by the plaintiff in his Declaration, as the queſtion reſolved againſt the defendant.

Hob. rep. 32. 52. pl. 213.

And

And upon a writ of Error in the C
quer Chamber, the Court also inc
ed against the defendant, for the
ter is in effect the same, and the
must be understood the essen
form, not according to every wo
here you have the ground laid d
before.

Yet the book saith that *Pasch.*
though the Court inclined that ei
of the words would bear an action,
it was agreed that the words were
found so absolute as the declarati
neither moved credit in the ear so
ly which is the force of a slander;
then they are no the same words
force and effect, as if the words w
laid, I know him to be a thief, and
were found, I think him to be a thi

For my part *Reader*, I doubt in t
case whether the finding of the J
do warrant the Declaration, becau
they are not the same words in fo
& effect (as is said before) And I co
ceive they are not the same in the
sentiall forme of them, for I quest
(as I have don before) in a ma she
say of another that he doth think
might have his wil, he would kill

the Kings true Subjects, and the King too, or that he doth think such a one to be a Thiefe whether these words be actionable or no, because the words are no positive charge, but onely the thought or opinion of the defendant. But to this it may be said that if such words as these should not be actionable, this would open a gap for scandalous Tongues, to slander a man at pleasure and yet no action ly, which were very mischievous; therefore I shall leave it to the judgment of the *Reader*:

Fenner against *Matton* in an action upon the case for words, which were thus, *Nicholas Fenner* procured 8 or 10 of his neighbors to perjure themselves, the defendant pleaded not guilty and the Jury find that the defendant said that *Nicholas Fenner* had caused 8 or 10 of his neighbors to perjure themselves, and if this Verdict were found for the plaintiff, or the defendant was the question, and the doubt was whether this word cause amount to as much as procure. *Tanfield Justice* seemeth that it doth not, for he might be a remote cause, as *causa sine qua non*, and

Mich. 4. Iac. in the kings Bench.

& yet no procurer, as if a notary writ a writing, and put to this a seale, and another take it and forge and publish it, the writer was the cause that this was forged, and yet no procurer of it. I find no judgment in this case, therefore quere of it.

Hil. 3. Iac. in the Kings Bench. *Chipsam* against *Ieek* for these words, *Chipsam* is a theef, for he hath stollen a Lamb from A. and Geese from B. and killed them in my ground, issue was joyned, whether the defendant spoke the words *modo & forma*, &c. the Jury find that the defendant said that the plaintiff was a Theese, for he hath stollen a Lamb from A. and killed it in my ground, but they find that he spoke nothing of the geese, yet it was resolved that the finding of the Jury did wel warrant the declaration of the plaintiff, because that the substance of the words is, that he is a theef, and therefore he hath &c. only a demonstration in what is a Theese, which is as well in stealing of the Lamb, as of the Geese, and then if it be found that he said any of them, it sufficeth, and iudgment was given for the plaintiff.

Norman

Norman and *Symans* case; The plaintiff brought an action for words, and declared, that they were spoken *falso & malitioſe*; the Jury finde the words spoken *falso & injurioſo*, and it was adjudged, that the action would not lie, becauſe the finding of the Jury doth not warrant the Declaration in the ſubſtantial form of it; for if the words were not ſpoken out of *malice*, they will not be actionable, as I ſhall ſhew you hereafter. Trin. 7. Car. in the kings ben.h.

Brugis brought an action for theſe words, *Brugis* is a maintainer of theeves, and a ſtrong theef himſelf; iſſue was joyned whether the Defendant ſpoke the words *modo & forma*, and the Iury found all the words, except the word (*ſtrong*) and in this Caſe the Plaintiffe had judgment. 6. E. 6. Dyer fo. 75. fol. 21.

Here we may obſerve, that though every word alledged in the Declaration, be not found, yet the eſſential and ſubſtantial forme of the words being found, that is ſufficient to maintain the Declaration. This I ſay you may obſerve, not onely by this Caſe, but the caſe alſo before put.

Barbar brought an action againſt

Hawley for these words, *John Barber* and his Children be false Theeves, men cannot have their Cattell going upon the Common, but they will kill them, and eat them, &c. issue was joyned whether the Defendant spoke the words, *modo & forma*, and the Jury found that he spoak these words, viz. Men cannot have their Cattell going upon the Common, but *John Barber* and his Children will kill them with *Barbars* Doggs; in this case it was adjudged for the Defendant.

The reason is plain, because the words found by the Jury, do vary in the essentiall and substantiall form from the words in the Declaration. For the words in the Declaration, do charge the Plaintiff with Theft; for which an action would lie, but the words found by the Jury, charge him only with treipass, for which no action will lie; I have sufficiently proved the ground laid down before, and therefore I shall now proceed to the second thing (which I have touched before) very considerable in all actions for words; and that is,

Quo animo, With that affection

words are ſpoken, whether ex malitia, *or not for if it do appeare that they were not ſpoken out of malice, they will not be actionable.*

Ralph Brook, York Harranld, brought an action againſt *Henry Mountague,* Knight, Recorder of London, for ſaying of the Plaintiff, that he had committed Felony. The Defendant pleaded how that he was a Counſeller, and learned in the Law, and that he was retained of Counſell againſt the Plaintiff at ſuch a Tryall, and ſet forth all the matter in certain, and that he in giving evidence to the Jury, ſpoake the words in the Count (which words were pertinent to the matter in iſſue) in this caſe it was reſolved that the action would not lie, becauſe that the words were not ſpoken out of malice, for that they were ſpoken to the purpoſe, and being to the purpoſe, though the words were falſe, no action will lie againſt the Defendant. Mich. 31 Iac. in the Kings Bench.

As in an Appeale of murder, if the Councell with the plaintiff, ſaith that the Defendant committed the murder, though it be not true, yet he ſhall not be puniſhed for it, becauſe that what he

ſaid was pertinent, ſo that it cannot be taken to be ſpoken out of malice but only as of counſel for the Plaintiff.

But if that which he ſaith be impertinent in ſcandall of him againſt whom he ſpeake it, as in Treſpaſs of batttery to ſay that the Defendant is a Felon, there an Action will lie, for that they cannot be otherwiſe taken, but to be ſpoken out of malice.

And in this Caſe it was further ſaid that if a Counſellor be informed of any matter of ſlander apt to be given in evidence, and hee ſpeakes it at other places, and at another time, then in evidence an action lyes for it, for the ſame reaſon.

In confirmation of the former Caſe, there was this caſe put and agreed for Law, which was the Caſe of Parſon *Prit* in *Suffolk*, the caſe was thus, In the Acts and Monuments of Mr. *Fox*, there is a relation of one *Greenwood* of *Suffolk*, who is there reported to have perjured himſelf before the Biſhop of *Norwich*, in the teſtifying againſt a Martyr, in the time of Queen *Mary*, and that afterwards by the judgment of God, as an examplary pun-

ſhment

ſhment for his great offence, his bowels rotted out of his belly.

And the ſaid Parſon *Prit* being newly come to his benefice in *Suffolk*, and not well knowing his Pariſhioners, preaching againſt perjury, cited this ſtory for an example of the juſtice of God, and it chanced that the ſame *Greenwood* of whom the ſtory was written, was in life and in the Church at that time, and after for this ſlander, brought an action, to which the Defendant pleaded not guilty, &c. and upon evidence all the matter appeared, and by the rule of *Anderſon* Juſtice of Aſſize, he was acquitted, becauſe it did appear the defendant ſpoake the words without malice, and this rule was approved by the Kings Bench in this caſe.

In the arguing of *Sanderſon* and *Rudds* caſe, which I remembred before, theſe caſes following were cited by *Gotbolt* Serjeant, who was of counſell with the defendant, and agreed by the Court for Law.

Iames and *Rudlies* Caſe; the Defendant ſpoake by way of advice to his friend, telling him that the Plaintiff 40. & 41. of the Queen in Comm. Pl. as.

was ful of the French Pox, & therefore adviſed him not to keep him company, adjudged (he ſaid) that no Action would lie for theſe words of adviſe; the reaſon is, becauſe that theſe words were not ſpoken out of any malice to the Plaintiff but meerly out of good will to his friend.

Tr. n. 7. Car. in the Kings Bench.

Norman and *Simons* caſe, remembred before, the Plaintiff brought an action for words, and declared that they were ſooken *falſo & malitioſe*; the Jury find the words, and that they were ſpoken *falſo & injurioſe*, judgement was given that the Action would not lie, becauſe that they did not find the malice; for if the words were not ſpoken maliciouſly, no action will lie.

And therefore I conceive, that if a man bring an action for words, and do not declare that the words were ſpoken *malitioſe* as well as *falſo*, that the action will not lie.

Hill. 4. Car. i. the kings Bench.

In the caſe of the Lady *Morriſon* that I have cited before, this caſe was put by *Popham*, *chiefe Juſtice*: If one ſay in counſell and good will to his friend

that

that it is reported that he hath done such or such an ill act, and adviſes him to purge himſelf, and avoid ſuch occaſion afterwards; it ſeemes (ſaith he) that an action will lie for ſuch counſel; but quere ſaith the Reporter, for it is without malice. And truly, for my part, I conceive an action will not lie, for that reaſon, but I ſubmit it to the judgment of the Reader.

And now I have finiſhed my labour of ſhewing you what words are actionable in the Law, and what not. It will in the next place, be very neceſſary to be known, where a mans Suit or proſecution at Law, ſhall ſubject a man to an action, and where not, & here I ſhall lay down this as a rule.

That for any ſuit, or other legall proſecution in courſe of Juſtice (if not out of malice and touching a mans life) no action will lie. 13. H. 7. Kitway fo. 26. 11. of the Queene Dyer. fo. 2.

A man brought a Writ of Forger of falſe deeds againſt a Lord, pending which Writ, the Lord for the ſlander of the ſaid Forgery by the ſaid ſuit, brought his action *de ſcandalis Magnatum*; the Defendant juſtifies the ſaid ſlander, by bringing of the ſaid writ, by

the better opinion there (which is also agreed for Law in *Buckleys* Case in my L. *Cooks* 4th Book) the justification was good, for (saith the Book) no punishment was ever appointed for a suit in Law, though that it were false, and for vexation.

Cutler and *Dixons* Case, adjudged that if one exhibit *Articles* to a *Justice* of *Peace* against a certain person, containing divers great abuses and misdemeanours, not only touching the Petitioners themselves, but many others; and all this to the intent that he should be bound to his good behaviour: In this case the party abused shall not have for any matter contained in such *Articles*, an *Action upon the Case*, because that they have pursued the ordinary *course of justice* in such Case, and if *Actions* should be permitted in such Cases, those which have good Cause of Complaint, will not dare to complain, for fear of infinite vexation.

Cook. lib. 4. fo. 14. b.

Owen Wood exhibited a Bill in the Star Chamber, against Sir *Richard Buckley*, and charged him with divers matters examinable in the same Court, and further, that he was a maintainer of Pi-

rates

rates and Murderers, and a procurer of Murders and Pyracies (which offences were not determinable in the said Court) upon which Sir *Richard Buckley* brought an action.

In this Case it was adjudged, that for the said words not examinable in the said Court, an action would lie, because this could not be in *Course of Justice*; for that the Court hath not power or jurisdiction, to do that which belongs to *justice*, nor to punish the said *offenees &c.*

Also, by the Law, no *Murder* or *Pyracy* can bee punished upon any Bill exhibited in *English*, but the offender ought to be indicted of it, and upon this to have his tryal; so that hee that preferred this Bill hath not onely mistaken the proper Court, but the manner and nature of prosecution, so that it hath not any appearance of an ordinary suit, in *course of justice.*

But if a man bring an Appeal of murder returnable in the Common Bench, for this no Action lies; for though the Writ is not returnable before competent Judges, which may do *justice*, yet it is in nature of a lawful suit, namely, by writ of appeal. *Scarlet*

Scarlet brought an action against
Hob: rep: pa. 268. pl. 238. *Stiles* for these words; *thou didst steal a Sack.* The Defendant pleaded that there was a Sack of a mans, unknown, stollen, and that the common fame was that the plaintiff had stollen it, whereupon the Defendant did inform *Thomas Kempe* a Justice of peace, that he had stollen it, and in complaining and informing the said Justice thereof, he did there in the presence of *Kempe*, and of the plaintiff, say unto the plaintiff and of him, *thou didst steale, &c.* whereupon the plaintiff demurred in Law.

There is nothing spoken to the case in the Book; but I conceive the Law will be somwhat strong for the plaintiff, that the demurrer is good, and that the action (notwithstanding the defendants justification) will well lie.

For though common fame (as it is agreed in *Chudington* and *Wilkins* case)
Hob. Rep. pa. 112. pl. 105. be a sufficient warrant to arrest for felony, though the same be not true, and also to charge a man with Felony (as
Hob. Rep pa. 425. pl. 581 it is agreed in *Bland* and *Masons* case) because these tend to the advancement of Justice; yet it doth not warrant a man, to say he is a Felon and a Thief

for though common fame be such, yet the party suspected may be innocent.

Nor doth it any way difference the case, that the words were spoken before a Justice of Peace, because though common fame may (as I have said) warrant him to charge him with felony before a Justice of Peace, yet it cannot warrant him to call him felon.

A man baought an action against another for calling of him Theefe; The Defendant pleaded that there was a Robbery done, *&c. & communis vox & fama patriæ*, was that the Plaintiffe was guilty of it, and so justifies; but the justification was held nought, for common fame that a man is a Theefe, will not justifie any man in the calling of him so. But there it is agreed that it would defend a man in arresting and imprisoning another for it. Hob. rep. Page 93. pl. 71. & pa. 112 pl. 105.

Chudington and *Wilkins* case, adjudged that to call a man a Theefe after a generall or speciall pardon, though the defendant knew it not will beare an action, but there it is agreed, that to arrest a man for Fellony after pardon if he knew it not may be justifiable; because it is a legall course and an Act of justice.

In

Trin. 16 car. in the kings bench.

In *Iustice Crooks* case it was agreed by the Court, that though it be lawfull for a man to prefer a Bill in the Star chamber against a Judge for corruption, or any other, for any grand misdemeanour, because it is a proceeding in an ordinary course of justice. Yet if the plaintiff will publish the effect openly, by this means to scandall the defendant, this is punishable in another Court, notwithstanding the Bill pending in the Star-Chamber, because this tends meerly to scandall, and not to a pursuing of the ordinary course of justice, and so *Jones*, Justice, said it had been adjudged.

Owen Wood, and *Buckleys* case, cited before doth in effect make good that which Justice *Iones* said; the case was thus, *Owen Wood* exhibited a Bill in the Star-chamber, against Sir *Richard Buckley*, and charged him with very great misdemeanours: afterwards *Buckley* brought an action against *Owen Wood*, for publishing that the said bill and matters in that contained were true, and had judgment, which was afterwards reversed in the Chequer Chamber

chamber, because that the plaintiffe layed that the defendant publiſhed the Bill to be true, without expreſſing the matters in particular contained in the Bill, upon which the action was intended to be founded, ſo that thoſe which heard only the ſaid words that his bill was true, cannot without further ſaying, know the clauſes which were ſlanderous to the plaintiffe. So that it is in this caſe plainly admitted, that if hee had publiſhed the particular matters contained in the bill, and this had been ſhowen by the plaintiff, there the *Action* would have layen.

Note Reader, I have inſerted this Clauſe, in the rule before layed down (where the *proſecution* in *courſe* of *Juſtice*, is not out of *malice*, and touching a mans life) for this reaſon.

Becauſe I do conceive, That in caſe where a man is ſcandalled in his reputation, and his life in queſtion, by a malitious proſecution in courſe of Juſtice, that in ſuch caſe an action will lye. F. N. B. cook. liq. c. fo: 56. The Pond. terers caſe.

If two falſly and malitiouſly Conſpire to *indict* another, and after he that is ſo *indicted*, is *acquitted*, a Writ of *Conſpiracy* lyes. So if one only, falsly, and malitiously

maliciously cause another to be indicted, who is thereupon acquitted, an action upon the case in nature of a conspiracy, lyes against him for it; and that it hath been often adjudged, I shall only remember one case in point.

Pasch. 3. Jac. in the king's bench. Rot. 372.

Marsham brought an action against *Pescod*, and declares how that he was of good fame and report, and that the defendant intending to defame him, *falso & malitiose*, procured the plaintiff to be indicted of Felony, and to be arrested and imprisoned, *quousq; fuit acquietatus*; so that the alledging of the acquittal was insufficient, for that he ought to have said that he was *legitimo modo acquietatus*, the Defendant pleaded not guilty, and it was found for the plaintiff and *Richardson* said in arrest of judgement, that this action will not lie, if it be not alledged that he was lawfully acquitted, and said that *F. N. B.* had the like writ, and there it is alleadged expresly, that he was lawfully acquitted, and so it ought here;

Tanfield, Justice, A Conspiracy, not an action in nature of a Conspiracy, will not lie, if the Plaintiff be not *legitimo modo acquietatus*; but if one procure another

another to be indicted, arrested, and imprisoned, *falso & malitiose*, hee shall have an action upon the Case for the slander and vexation, though that hee be never acquitted; and hee said that the like action upon the Case had been adjudged to lie wel, though that the Plaintiff were never acquitted, and the Justices relyed much upon the words *falso & malitiose*, and after judgement was given for the Plaintiff.

Thus you may see that where a man is falsly and malitiously procured to be indicted, if hee be acquitted, a Writt of Conspiracy, or an Action upon the Case in nature of a Conspiracy, as the Case shall be, wil lie, and though he be not acquitted, yet an action upon the Case wil lie for the slander and vexation. Yet in all these Cases, there is a prosecution in course of Justice; but because this prosecution was malitious, tending much to the slander and scandal of the Plaintiff, therefore the action lyes.

But here I would have you observe, *Reader*, that the Plaiutiff ought in these actions to declare, that the Defendant, *falso & malitiose* procured him

to

to be indicted, because the *malice* is the ground of the Action; and if upon the Tryall it doe appear that there was *Probabilis causa* for the indictment and prosecution thereupon, the Action will not lie: Thus much shal suffice to shew you, in what case a legal prosecution in course of justice, shal subject a man to an action & in what not. In the next place I shal shew you (which I cannnot omit)

For what scandal of a Noble man, or great Officer, &c. an action de scandalis Magnatum, *will lie upon the Statutes of*

Cook. lib. 4. fo. 12, b. 13. a. 3 *E.* 1. *cap.* 33. or 2 *R.* 2. *cap.* 5.

For a suit, or other legal prosecution in Course of *Justice*, against a Noble man, or great Officer, no *Action* lies, as is adjudged in the Case of *Forger* of false deeds cited before: so that as to this, there is no difference betwixt a Noble man, and another person, but what scandalous words may be actionable in case of a Noble man, for which an action *de scandalis Magnatum* will lie, and what not, may be very Considerable. I shall cite onely one Case to this purpose, which will bee as a light to all Cases of this nature: and therfore

give me leave to give it you wholly (without diſſection or abbreviation) as I find reported.

The Earle of *Lincoln* brought an Action *de ſcandalis Magnatum* upon the Statute of *Weſtm.* 1. cap. 33. againſt one *John Righton*, and recited the Statute, and ſaid that the defendant ſaid of him, my Lord is a baſe Earl, and a paltry Lord, and keeps none but Rogues and raſcals like himſelf. Vpon not guilty pleaded, it was found for the Plaintiff, and it was moved in Arreſt of judgment, that the words were not actionable; for though they were unſeemly and immodeſt, yet they were not ſuch defamatory words upon which to ground an Action: for though they were true, the Earle could not incur any prejudice by them, *Crooke cont.* this Action *de ſcandalis magnatum*, is not to be compared to other Actions upon the caſe; for words ſpoken of any other perſons; for this is inhibited by Act of Parliament, and if the words be ſuch, that any diſcord may ariſe by them betwixt the King & his Subjects, or his Nobles, or any ſlander to them, to bring them into contempt, this Action lyes,

Trin. 5. Iac. in the kings bench.]

and I have seen a Record of a case [illegible] H. 8. of such an action brought by [illegible] Duke of *Buckingham*; for such [illegible] which might cause him to be in [illegible] tempt, which were holden [illegible] upon which to ground an Action [illegible] hart Attorney General for the Plain[illegible] also; who said that though an a[illegible] doth not lie for words betwixt co[illegible] mon persons, but in case where they [illegible] touched in life or Member, or [illegible] in reputation; yet if one speake [illegible] scandalous words of an Earle, or [illegible] Peere of the Realm, which impe[illegible] their credit, because that they ar[illegible] the great Councell of the King [illegible] State, and a principall part of the [illegible] Politick, so that their discredit or [illegible] paragement, is a disparagement to [illegible] the Realme, therefore every [illegible] which trenches only to their disc[illegible] is a cause of action, and this was [illegible] cause of the judgment in the case of [illegible] Duke of *Buckingham*, in 4. *H. 8. Fo[illegible] Iust.* it seems to me that the ac[illegible] lies, for they are words of great [illegible] to the Earle. But where the Statu[illegible] *Marlsb.* is, that Lords shall [illegible] distraine the Beasts of the [illegible]

ſt of the King, and carry them into Caſtles, ſo that they cannot be repleviſed; and if one ſay that a Lord hath ſo done, yet an action will not lye: *Tanfield, Juſtice, cenceſſit*, but he ſaith if one ſay of a Lord that he uſed to diſtraine and put the Beaſts in his Caſtle, *ut ſupra*, an action lyes; for one act againſt Law will not bring him into contempt: but if it be uſual for him ſo to do, this is a cauſe to make him contemptable. In the caſe of the Earle of *Arundell*, who had made Commiſsions to his Servants to make Leaſes, and improve Rents, one ſaid of him, *My Lord hath ſent his Commiſsioners to ſpoyle the Countrey*, it was adjudged that this action would lye, and yet in caſe of a common perſon, it would not lie without doubt, yet becauſe that it may cauſe the Lord to be in contempt with the King and the people, this action lay, and yet ſeems to me that it will here: *Williams, Juſtice*, to the ſame purpoſe, & that the Earle is, *Conſervator Pacis* at Common Law, and *Comes Regis*, and if any one ſpeak of them any thing which may make them to be contemned of the King or his people, an action lyes

upon this STATUTE.

Yelverton, Iustice, was absent, judgment was respited to the intent that the Defendant by his submission might give satisfaction to the Earle.

Here you see the difference betwee words actionable in case of a Noble man, and of a common person, For words only of discredit to a Noblema and which may bring him to contem with the King or his people, are suffici ent to maintain an action *de scandalo magnatum*, otherwise in case of a com mon person.

I have now *Reader*, quite finished my labour of shewing you for what scan dalls an Action will lie, for what not. But before I conclude, there are yet things yet in all Actions for words worthy the knowing, which I cannot omit. The first is to declare unto you the use or office of an *innuendo*. As the next is, to shew you where an *Averment* will be necessary, & where not.

For the first you may take this for certain and infallible rule.

That an innuendo *shall never make Words actionable, which of themselves are not actionable.*

And therefore, if words be of a double or indifferent meaning, and in the one sense actionable, in the other not; In such case an innuendo *shall never make them actionable.*

As if a man bring an action against another for saying that he hath the Pox (*innuendo* the French Pox) or for saying that the plaintiff burnt his Barn (*innuendo* a Barn with Corn.) Cook lib. 4. fo. 17. b. & 20. a.

In these cases the (*innuendo*) where the words are of an indifferent meaning, and may be taken so as not to be Actionable, shall not strain them to such an intendment, as to make them actionable; and therefore the (*innuendo* in these cases idle and to no purpose.

So if the words be incertain of themselves, or the person of whom they are spoken, an (innuendo) *shall never make them actionable,*

If a man bring an action against another, for saying that the plaintiffe took away money from him with a strong hand (*iunuendo felonice*) here the words being incertaine in the intendment whether of a Tresposs or Felony the *innuendo* cannot extend them to Mich. 6. car. in the kings bench. cited before.

an intendment of Felony, thereby to make them actionable, and so it was adjudged.

Hob.Rep. pa.3. pl. 4. So if a man bring an action against another for saying that he forged a warrant (*innuendo quoddam Warrantum, &c.*) as *Thomas* and *Axworths* case is cited before, or for saying that he forged a writing (*innuendo* such a writing) as *Harvy* and *Duckins* case, is likewise cited before. In these cases, because the words themselves are utterly incertain, adjudged that the (*innuendo*) shall never make them actionable,

Hob.Rep. pa. 6.3.p 48.

Cookelib: 4.fo. 17.b. A Servant of *B.* brings an action against one for these words, One of the Servants of *B.* (*innuendo*) the Plaintiff, is a notorious Felon, or Traitor, &c.) And if an action be brought for these words, I know one neere about *B.* that is a notorious Theefe, (*innuendo* the Plaintiff:) in these cases, because of the incertainty of the persons intended by the words, the (*innuendo*) shall not make them actionable,

I could multiply cases upon this ground, but because these wil be sufficient; I will adde only the office of an (*Innuendo.*)

The

The office of an (innuendo) *is only to* Cook. lib. 4. fo. 17. b.
certain and design the same person, which was named in certain before; as thus, two are speaking together of *B.* and one of them saith, he is a Theefe: there *B.* in his Count may shew that there was a speech of him betwixt those two and that one of them said of him, hee (*innuendo* the plaintiff) is a Theefe.

Or else to declare the matter or sense of the words themselves, which was certainly expressed before; as thus, *A.* and *B.* speaking of *C. A.* said that *C.* was a traytor, to whom *B.* said that he was so too: in this case, if *A.* bring an action for these words, he may shew in his Count, that there was a speech betwixt him and the defendant of *C.* and that the plaintiff said to the defendant that *C.* was a traytor, & that the defendant said then to the plaintiff, that he (*innuendo* the plaintiff) was so too (*innuendo* a Traytor.)

In both these cases the (*innuendo*) is good, because it doth its Office, in designing of the person, as also in declaring of the matter or sense of the words which was certain before.

But an *innuendo* cannot make a per- Cook. lib. 1. fo. 17. b.

ſoncertaine which was incertaine be-
fore, nor alter the matter or ſenſe of the
words themſelves, for it would be
inconvenient that actions ſhould be
maintained by imagination of an intent
which doth not appear by the words,
upon which the action is founded; but
is utterly incertain, and ſubject to
deceivable conjecture.

For by this means, if I ſhould bee
ſuffered to be the declarer of the mean-
ing or intendment of the incertain and
doubtfull ſpeeches of another man;
I might judge him to ſpeake that, hee
never thought or intended, and ſo pu-
niſh him for that wherein he never of-
fended.

The next and laſt thing to be conſidered is where an avermeut will be neceſſary in theſe actions, and where not. and here I ſhall lay down this as a grouud.

¶ *That in all caſes for words where there is any thing that is the cauſe or ground of the action, or tends neceſſarily to the maintenance of it, in ſuch caſe the action will not lie, without that thing be expreſſly averd to be, or not to be, as the caſe requireth.*

H b. rep p g. 8.

Miles brought an action against

Iacob

Leech for these words, Thou *innuendo* &c. hast poysoned *Smith*, *quandam Sam. Smith ad tunc defunct*, *innuendo*, adjudged the action would not lie for this reason, amongst others, because that it did not appear that *Smith* was dead at the time of the words spoken; and the *innuendo* for that purpose is no sufficient averment.

The like case was *Trin.* 17. of this King; A brought an action against B. for these words, *Thou hast killed my brother*, *innuendo*, *C. &c. fratrem &c. suum mortuum*, adjudged the Action would not lie, because the Plaintiff did not aver that he was dead at the time when the words were spoken, and it was ruled that the *innuendo* was not a sufficient averment. Trin. 17. car. in the common Pleas.

The reason of these Cases is, because the death of the party is the ground of the action, and if hee were not dead (which shall the rather bee intended, without the Plaintiff do expresly aver him to be dead) then the plaintiffe could not be indamaged by the speaking of the words, and by consequence no action will lie for them.

I must confess that I have a report of

Pasch. 1. Jack. in the king's bench. Rot. 107.

a case which was 5. of *King James* [illegible] judged against the former cases, and the case was thus: Sir *Tho. Hole* brought an action against *Taylor* for these words Sir *Tho. Hole* hath killed his Cook, [illegible] and did not aver that he had a Cook, nor that the Cooke was dead, and this was moved in arrest of judgment, and by the whole Court the Declaration was held good, because it shall not be intended, that there is any such purgation of the slander as this is, except it doth appear in the Record, as the life of a man, which is reported to be dead. But if it were expressed in the Record, that the party reported to be dead, was in life, it were otherwise.

As if words were spoken of a woman, that she had murdered her husband, if she and her husband bring the action, in this case the action will not lie, because that it doth appear by the Record, that the slander is not prejudicial, but is purged notoriously, by the apparent being of the husband in life, like *Snags* case in my Lord *Cookes* 4: B[illegible]

Cook. lib. 4. fo. 16. a

Quære tamen; for I doubt Reader the Law of this case, because of the Case before adjudged.

A. saith, that B. told him that C. ole a horse, these words with an averment that B. did not say any such ing to A. will beare an Action, like Lady *Morrisons* Case, which I have merly cited, fo. 6. B.

Whether *Welsh* words, or words in *English* doubtful in sense, yet equipol- ne, and of a common intendment and ceptation, in some certain place with ords actionable, will bear an action, ithout an express averment of the portance of them, or no? *quære &* ide fo. 6. a.

Hasselwood and *Garrets* Case, cited fore, whosoever is he that is falsest heefe, and strongest in the County of *Salop*, whatsoever he hath stollen, or hatsoever he hath done, *Thomas Hasselwood* is falser than he, resolved t the words were actionable, with averment that there were felons thin the County of *Salop*; but for fault of such averment the judgment en in the Common pleas was rever- in this Court. Pasch. 1. Iac. in the kings bench. Rot. 107.

ce *Reader*, if there were no felons that County (which will rather be nded, if it be not averd that there e some) then the speaking of the words

words could be no slander to the plaintiff, and so no action can lye.

Hob. rep. page 309.

Blands Case cited before, he brought an Action against A.B: for saying that he was indicted for felony at a Session holden, &c. and did not aver that he was not indicted, and after a Verdict for the plaintiff judgment was stayed, because there was no averment, *ut supra*. Note if hee were indicted, which he doth tacitly admit, then no cause of action.

Mich. 15. car in the kings beuch.

Johnson against *Dyer*, the Defendant having Communication with the Father of the plaintiff, said to him, I will take my Oath that your Son stole my Hemns, and the plaintiff did not aver that he was his Son, or that her had but one Son, and therefore adjudged that the action would not lie. In this Case if he were not his son, then no cause of action.

One *Clarke* said, that he had a son in *Nottinghamshire*, who had his Chest picked, and a hundred pounds taken out of it, in one *Lock-Smiths* house. I thank God I have found the Thief who it is, it is one that dwelleth in the next house, called *Robert King*

Pasch. 7. Jac. in the kings. beuch.

upon

upon which *Kingston* brought an action and had a verdict, and it was moved in arrest of judgment, because that he did not aver that he dwelt in the next house; *Crooke*, one said that *Prichards* man robbed him, who brought an action, and did not aver that he was *Prichards* man, and therefore it was held that the action would not lie. And the Justices in this Case would not give judgment.

Nota constat. in this Case that the plaintiff was the party of whom the words were spoken: for there might be another of the same name dwelling elsewhere, and therefore he ought to saver that he dwelt in the next house, that he may be certainly intended to be the same person of wh om the wods were spoken

Where words shall not be actionable without an averment of a speciall dammage, See fo. 28.

I have clearly proved the ground before laid down, and by these Cases you may be sufficiently instructed, where an averment will be necessary, and where not. And so I have quite finished this small Treatise.

May

May the Reader find as much p
and delight in the reading
it, as the Author had
Composing of it, such is
urgent desire of

Your affectionate frie

JOHN MAR

Arbitremen

Arbitrement.

THe next thing *Reader*, that I have undertaken to discourse of, is Arbitrements, the learning whereof will be very usefull to all men; in regard that Compremises or Arbitrements were never more in use than now. And most men either have been or may be Arbitrators, or at least have done, or may submit themselves to the Arbitration of others. And as long as differences and contentions arise amongst men, which will bee to the worlds end, certainly the learning of arbitrements will well deserve our knowledge. Which being well observed and learnt by all men, will be a good means to prevent many Suits and contentions in the Law for the future, which are now daily occasioned through the defects of Arbitrements, which rather beget and raise new controversies amongst the parties

parties, then determine the old. The only cause whereof, is the ignorance of men in this learning. The Compoſer hereof, *Reader*, took this paine, only out of a deſire of the common good, that none might be ignorant of that which concerns all. And if it ſhall effect that for which it was made, the inſtructing of the ignorant, and the good of the publike, the Author hath his ends, and abundant recompence for his labour. Which that it may accompliſh, is the earneſt and affectionate deſire of the true ſervant to the publike.

30. MARCH.

In

not judge of what sum the Bond shall be adjudged; the Arbitrement was void for the incertainty, and that the Arbitrators could not assigne over their power, but that themselves ought to determine it; and therefore neither the Plaintiffe, nor the Defendant could assess the same; the next thing considerable, is,

Whether the authority of Arbitrators be countermandable, or not.

In this Case also the Law wil be strong and evident, that this authority is countermandable at any time before the award made; but not after, because then the authority is executed, and cannot be countermanded, and so are all our Bookes but 5. E. 4: where it is said, that if a man be bound to stand to the Arbitrement of I. N. he cannot discharge the Arbitrator, contrary if he were not bound to stand to his Arbitrement; yet *Brooke* upon this Case saith, that it is cleare that he may discharge the Arbitrator in both Cases, but in the one Case he shall forfeit his Bond, in the other hee shal lose nothing, because *exunda submissio-*

28. *H.* 6. 6
21. *H.* 6: 39: 49. *E.* 3: 9: 18. *E.* 4: 9. 8. *E.* 4. 10. 5. E: 4. 3. *Br. arbitrement.* 35 6. *H.* 7, 1 *a. b.*

one non oritur actio, so likewise it is resolved in *Vinyors* Case, which I shall put you presently.

28. H. 6. 6. In 28. H. 6. by *Ashton* Justice, if there be two plaintiffs, and one Defendant, or two Defendants and one Plaintiff, put themselves to the award of others, neither the one Plaintiff without the other, nor the one Defendant without the other, may discharge the *arbitrators*, the reason is obvious, because that they were chosen by the joynt authority of both, and therefore cannot be countermanded by one alone.

Cook. lib. 8, fo. 82. But that which is the last and best authority, is *Vynyors* Case, where it is resolved, that though a man be bound to stand to the *arbitrement*, &c yet he may countermand the *arbitrators*; the reason that is given is, because a man cannot by his owe act make such an authority, power, or warrant, not countermandable, which by the law, and its own proper nature is *countermandable*, as if I make a letter of attorney to make livery, or to sue an action in my name, or if I assigne Auditors to take an account, or if I make one my Factor, or submit my selfe to an *arbitrement*, though

though that these are done by expresse words *irrevocable*, or that I grant, or am bound that all these shall stand *irrevocable*, yet they may be revoked, so if I make my testament or last will *irrevocable*, yet I may revoke it.

But in this Case it was further resolved that by the countermand or revocation of the power of the *Arbitrator*, the Bond (according to the opinion of *Brooke*, before cited) is forfeited, because he was bound to stand to his award, which hee doth not doe when he discharges the *Arbitrator*. *I* have sufficiently cleared it, that the authority of *Arbitrators* is *countenmandable*, but hence arises two questions more, the first is,

Whither the authority of arbitrators be countermandable without Deed, or not.

THe resolving of which doubt I conceive wil stand upon this difference, where the *Submission* is by deed, and where without deed; where it is by deed, in such Case I conceive the authority cannot be counterman-

9, *E*, 3. ded but by deed, and so is 49. E. 3. but
49 where it is without deed, there the authority may be countermanded without deed, and this I ground upon that rule of Law, *eodem modo quo quid creatur dissovitur*. It is but agreeable to naturall equity, that every thing should be dissolved by the same means or power that it was created.

And in *Vinyors* Case which *I* have cited before, there the submission was by deed, and the countermand pleaded by deed, the second, and last doubt or question considerable in this countermand of the authority of arbitrators is.

Whether there ought to be notice of the countermand or not.

8: *E*. 4.
10, *b*. & 11. *a*, 21: *H*. 6. 30. 28: *H*. 6, 6. & 6. *H*. 7. 10. *Coke*. *lib*, 8 *f* 8, 1. *b* 2: *a*

There must be notice of the countermand, for without notice it is no revocation, or abrogation of the authority, and so it is resolved in the Bookes which you have in the Margent.

Vinyors Case cited before was thus hee brought an action of *Debt* upon

Bo

Bond againſt *Wilde*, conditioned for the ſtanding to an award, to which the defendant pleaded that the arbitrator made no award, the Plaintiff replyed, that after the making of the ſaid Writing *Obligatory*; and before the Feaſt of, &c. The defendant by his deed, &c. *revocavit & abrogavit omnem authoritatem, &c.* which he had given by his Writing *obligatory* to the arbitrator, upon which the defendant demurred.

'Tis true, that in this Caſe it was reſolved that the Plaintiff need not averre that the *arbitrator* had notice of the countermand; but the reaſon that is given, is not becauſe that no notice is requiſite, but becauſe notice is implyed in theſe words, *revocavit & abrogavit*; as in the words, *feoffavit dedit & demiſit*, a livery is implied.

But it was reſolved that without notice, it is not revocation of the authority, and therefore if there were no notice in this *Caſe* (ſaith the Book) the Defendant ought to have taken iſſue, *quod non revocavit, &c.* and if there were no notice, it ſhall be found for the Defendant. I have done with

the countermand of the authority; the next thing is to be considered, is,

What an arbitrement is.

An award, or an *arbitrement*, is nothing else but the order, judgement, and decree of the *Arbitrators* upon the matter or thing in controversie, referred or submitted unto them by the parties for their determination; thus in short you see what an *Arbitrement* is, the next and maine scuple or question wil be,

What arbitrement is good in Law, and What not.

An award or an *arbitrement* may be void in Law, in several respects, and first.

Where the Award is not according to the Submission.

{ persons, things submitted, or the circumstances of the submission.

And this threefold, either in respect of the

And

And first, an award may be void where it is not according to the submission in respect of the persons; that is where it doth award a thing to be done by, or to a stranger who is not party to the submission.

In 22. H. 6. the Case is thus; in debt upon a Bond to stand to an Award the Defendant pleaded that the Arbitrators did award him to pay 20 shillings to *R.* a stranger, which hee payed in this case by the opinion of the whole Court, the award was void. 22. *H.* 6. 46 8. *E.* 4, 1. & 9 36. *H.* 6. 8. *as.*

So in 17. E 4. two submitted themselves to the Arbitrement of *J.S.* of all Trespasses, &c. who awarded that the one should pay to the other 40l, 10l. in hand, and that he should find three several sureties, every one of them to be bound with with him in 10l, to pay the 30.l. residue at a certaine day by the whole Court, the award was void, as to the finding of the sureties which were strangers to the submission. 17. *E.* 4. 5. 19. *E.* 4. 1. 18. *E.* 4, 29. *b* & 17. *H.* 7. *Keilway, fo.* 45. *pl.* 2.

And therefore certainly that opinion in 5. H. 7. cannot be Law, where it is admitted that an award to make a Feoffemen to a a stranger is good,

Mich. 28 & 29. of the Qu. in the Kings Bench. Rot. 476

Moor and Bedels Case was thus. *Bedel* recovered by default in an Action of Waſt againſt *Moore* 45 l. damages, after which judgement they ſubmitted themſelves to an Award, the Arbitrators award that *Moore* ſhould pay to *Bedel* 10 l. at certain dayes, and 15 l. at certain other days, and that for the payment of 15. l. one *William Salter* ſhould be ready to ſeal and deliver fifteen Obligations, &c: and that the ſaid *William Salter* ſhould do other things not within ſubmiſſion.

Paſch. 24. of the Queen in the Kings Bench: Rot. 24: 37.

In this caſe it was adjudged, that as to all that was to be done by *William Salter*, being a ſtranger to the ſubmiſſion, the award was void, for they are not bound to performe any award, but that which is within the ſubmiſsion; ſo likewiſe it was adjudged betwixt *Eccleſfield* and *Malliard*, in the Kings-Bench.

Trin. 4. of the Qu. Dyer fol. 216 b.

Two ſubmit themſelves to the Arbitrement of A. who arbitrates thus; the award of A. indifferently choſen by I. for the behalfe of the Obligor of one part, and the Obligee of the other part, &c. the doubt was, whether the award

award were between the parties or no; but it was ruled that it was, because I was not party to the award, but a deputy or factor, &c.

A. and B. were bound to stand to the arbitrement of I.S. concerning a matter in controversie, which did arise of the part of the wife of B. before coverture, I.S. awarded that *A.* should pay so much to *B.* and his wife. In this Case it was moved by Serjeant Rolls, that the award of payment of Money to the wife was out of the submission, and therefore nought. *Trin.* 16. *Car. in the Kings Bench.*

But by the whole Court the award was held good, because it doth appear, upon the submission that the controversie did arise on the part of the wife.

Secondly, an award may be void, where it is not according to the submission, in respect of the things or matters submitted.

If one be chosen *Arbitrator* to make an arbitrement upon one thing, and hee makes an arbitrement upon another thing, the arbitrement is void. *Pl. Com. fo. 396. a*

In the case of *Moor* and *Bedel*, cited before,

before ; who ſubmitted themſelves to an arbitrement of all matters in varience betwixt them ; the Arbitrators award (amongſt other things) that whereas *Bedle* being poſſeſſed of a certain Copy-Hold, holden of the Mannor of L. in the County of B. had made a Leaſe for yeeres of the ſaid Copy-hold by Indenture contrary to the Cuſtome, that one *William Salter*, *pro poſſe ſuo*, ſhould cauſe that no advantage ſhould be taken of the forfeiture in this caſe it was adjudged, that the award concerning this Copyhold not being within the ſubmiſſion, was void.

7. & 8: of the Queen. Dyer, fo. 242. pl. 52.

Two ſubmitted themſelves by recognizance to an Arbitrement, of the right and intereſt of two hundred Acres of Land, &c. the Arbitrators award that the Defendant ſhould have Brakes during his life in the Land, reſolved that the award was not according to the ſubmiſſion becauſe that that was of the right and intereſt in the Land; and the award is onely of parcell of the profits out of it.

2. R. 2. 18. b. 22. E. 4 25, b. Coke lib. 5 fo. 3, a.

If *I. N.* and three others put themſelves upon an award of *I. S.* of all actions

Actions and demands betwixt them: In this Case the *arbitrator* hath good authority to make an award of all joynt matters betwixt them, and of all several matters also, but hee can not arbitrate any matter betwixt the three onely, because they are one party against the fourth, but hee may determine betwixt any of the three and the fourth.

In 9. E. 4. two submitted themselves to the *arbitrement* of one *I. L. De omnibus actionibus personalibus fictis & querelis &c.* betwixt them, &c. who awarded, that because the Defendant had committed divers Offences to the Plaintiffe, and that the Plaintiff was seized of such an House in Fee, that the Defendant should release to the Plaintiff, all the right which he hath in his house, &c. 9: E: 43. b: 44: E. H: 6: 8: & 11: ac.

In this Case I conceive the better opinion to be, that the *arbitrement* is void, because that the power of the *arbitrator* who is a Judge privately chosen by the parties, shall be taken *stricti juris*, in that thing onely of which the compremise is, and not in another thing, and here the compremise

misse was but of a thing personal, and the arbitrator hath awarded a satisfaction reall, to wit, a release of a right to a house, which was not comprized within the submission.

And *Littleton* in this case said, that if hee had awarded that the Defendant should serve the Plaintiffe two years, this would be void.

And by *Cook*, if wee put our selves in arbitrement *de jure, titulo, & possessione Manerii de Dale*, and the *Arbitrator* makes an award of the Mannor of Sale, this is void.

Trin 3. Jac. in the Kings Bench. Rot. 216. *Hayns* against *Arnsteed*, in debt upon an Obligation to stand to an arbitrement in all causes that have been depending betwixt the parties, *ab initio mundi*, the award is, that the Defendant shall release all causes to the Plaintiff, from the beginning of the world, *usque, &c.* *Tanfield*, Justice, that the award is void, for it is that the Defendant shall release all causes generally: and the submission is of all causes depending then, and so the award void, and then the obligation not forfeited, *quod Curia concessit*, and judgement was given for the Defendant.

In

In a Writ of Error upon a judgement given in the Common Bench, in debt upon an *Obligation*, to ſtand to the award of I. S. concerning an action of account, pending, the arbitrator made an *Award* touching the account; and further awards that every of the parties ſhould releaſe to the other all *Actions*: the error in point of Law was, that the award was void, for though the *Arbitrement* may be good in part, and void in part, yet if it be void in any part, the Obligation is void, *quod non allocatur*, for *per Curiam* when the award is made for more then is ſubmitted (as in this Caſe) it is good for the thing ſubmitted, and void for the ſurpluſage, but if the award be made of leſs than is ſubmitted, then it is void for the whole:

Mich. 7. Jac. in the Kings Bench. Cornelius Lawrence, & Cars Caſe.

An award made for more than is ſubmitted, is good for that which is ſubmitted and void for the reſidue.

If divers Covenants be, and a man is bound in an Obligation to perform them, and ſome of the Covenants are void and againſt Law, and the reſidue good, yet he ought to perform thoſe that are good, otherwiſe the Obligation is forfeited, and this was one Alderman *Leetes* Caſe, *vide* 14. H. 8. where

wherefore judgment in this Case was affirmed.

Goffe against *Browne*, upon an Obligation dated the 23. of *Frebruary*, to perform an award of all Causes untill the day of the Date of the Bond. The Defendant pleaded that the Arbitrators made no award. The Plaintife replyed that the 28. of *March* following, they made an award, *de & super premissis*, that the Defendant should pay the Plaintiff, 20. l. at Midsommer following, in ful satisfaction of all matters between them, and that they then should make the one to the other, general releases of all matters betweene them, and assigned the breach for the non-payment of the 20. l. The Defendant demurred; because the award did seeme to exceed the Submission, being for discharge and satisfaction of all matters to the day of the award, which was more then was submitted, for it may be that the Arbitrators might meane some part of the 20. l. in discharge of the Causes that might arise betweene the 23. of *Febrnary*, and the 28. of *March*, which were not within their

Hob. Rep. pag. 267. pl. 333.

their power, and so for the release.

Yet the judgment was given for the Plaintiff, either because *de & super Premissis*, may import a restraint to the thing submitted, or else that no new causes shall be supposed, except they were alledged, in pleading of awards of causes, they need not aver that these were all, &c. *Coke lib: 8, fol: 98; Bospoles Case.*

There was a Case which was betwixt *Robert Tiderby* the Father, and *Robert Tiderby* the Sonne, which was thus; they bound themselves to stand to the Award of I. S. concerning all controversies, quarrels, and debates, right, title and possession of, or concerning the Mannor of *Dale*, I. S. Awarded a conveyance of the Mannor of *Dale* to certaine usee, and that *Robert Tiderby* the Father, should deliver all evidences, and charters, concerning the Mannor. *Mich. 9 Jac: in the Kings Bench.*

In this Case it was objected that the delivery of the Evidences was not within the Submission, for they are neither the Right nor Title nor Possession of the Land. To which it was said that the Charters are the nerves and sinews of the Land, and therefore

therefore within the words Right and Title, for without the Charters, neither of these can be maintained, also by 8 H.6. & 26 E.4. Where Arbitrators have power over the principal, they have power over the accessory; and therefore the Right and Title of the Land, being put to the award of I. S. which is the principall, he hath power to make an award of the Charters, which are the accessory.

Again, an award may in some Cases be void, where it is made of part onely, of things or matters contained in the submission, and not of the whole.

In 19. H. 6. two submitted themselves to an award, upon the Right, Title, and Possession of Land; the Arbitrator made an award of the possession onely: which was objected by *Yelverton* to be nought, because it was of parts of the thing in submission only: But by *Newton*, if two submit themselves to an award of all actions, reals and personalls, and an award is made of all actions personalls onely, this is good, and so was the opinion of the whole Court.

In 39. H. 6. by *Prisot*, where two

of

or three things are put in Arbitrement joyntly, and an Award is made of part, and not of the whole, this is a void award: 39.H.6.9

And in 22. *E.*4. where the submission is of all trespasses, betwixt *A.* of the one part, and *C.* & *D.* of the other part; and an award is made, that *A.* shal pay 10 l. to *C.* and saith nothing of *D.* yet it is a good award: for it may be that A. hath offended *C.* and hath not offended *D.* 12.E.4.25. 2.R.3.18. b:20.

Which Books, and all others to this purpose, must bee understood with these differences: First, where the submision is by Deed, and where without Deed: where it is without Deed, there the Award may be made of part only, and good. Cook.lib. 4. fo. 98. Balpoles case. Trin.4.of the Queen Dyer fol. 216. b. &

Again, where the submision is by Deed, there is this difference to be observed; where the submision is generall of all matters, &c. or in speciall of some particular things only, with an *Item quod* or *Proviso*, the award be made *de premissis*, or that the said award be made and given up by such a time: and where the submision is generall or speciall, without 7.& 8. of the Queen Dyer fol. 242.pl. 5.

such a conditionall conclusion. For in the first case the award must be made of all the matters submitted, because of the conditional reference, & in the last, the award may be made of part only, and good,

So it is (where the submission is not conditionall) in case of divers particular persons (as the case is put before) if two of one part, and one of another part submit themselves, the arbitrator may make an arbitrement, betwixt the one of the two of the one part, and the other of the other part, and good,

But note Reader, that there is this difference to be observed betweene pleading of an award upon a submission generall conditionall, and pleading of an award upon a submission specially conditionall.

Baspoles case, ubi supra.

For in the first case, if an award be pleaded *de premissis modo & forme sequentibus*; and alledged to be upon one single matter in controversie, this is good; because it is shewn that the award was made *de premissis*, which doth import an award of all that which was referred to the arbitrators;

form; and ſo it ſhall be intended, untill the contrary be ſhewn by the other party, for when the ſubmiſſion is generall. *Generale nihil certi implicat*, and it may well ſtand with the generality of the words, that there was but one cauſe depending in controverſie betwixt them.

But in pleading of an award upon a ſubmiſſion ſpeciall conditionall, there the award muſt be expreſly alledged to be made of all things within the ſubmiſsion, or otherwiſe it is nought, becauſe upon the very face of the award it will appear, whether it were made of all things in the ſubmiſſion or no. For if the ſubmiſſion be of ſeverall things in ſpeciall, and an award pleaded only of one, it is apparent that the award is not of all matters contained in the ſubmiſſion:

Again, if upon the pleading of an award upon a ſubmiſſion general conditionall it doth appear, either upon the ſhewing of the other party (as hath been ſaid) or by the award it ſelf, that it was not of all matters in controverſie; in ſuch caſe alſo, the award will be void, though the ſubmiſſion

were generall, because that it was conditionall.

Trin. 4. of the Queen Dye, fo. 216. b.

Mote and *Meverils* case, in my Lord *Dyer* was thus, they were bound to stand to the award of A. for Dilapidations, &c. and all other suits, quarrels, &c. *Ita quod*, the said award were made, &c. who made an award of the delapidations, with a protestation that hee would not meddle with the rest. In this case the opinion of the Book is, that the award is nought, for that it did not extend to all the points in the submission, for he made no arbitrement of the suits and quarrels, &c but made an expresse protestation that he would not meddle with them, by which he hath disabled himself to be an arbitrator in the premises, because that he refused to make an arbitrement according to the submission of the parties, who chose him for to arbitrate, conditionally, *ut supra: viz.* So that the first award, &c. which as well of suits and quarrels, &c. as of dilapidations.

In this case, though the latter part of the submission were generall, yet because it was conditionall, and it did appear

appear by the award it self, that it was not made of all things submitted, therefore the award was held void.

But in this case I conceive, that if the award had been of the dilapidations generally, without the Protestation, that it had been good enough, because that the latter part of the submission is generall: and therefore if the award had been pleaded *de premissis*, and alledge the award of the dilapidations, it shall be intended that this was all the matter in controversie betwixt them, until the contrary be shewed.

There is one thing yet in *Baspoles* case worth the noting, which I cannot omit: where it is adjudged, that though there are many matters in controversie, yet if one only be notified to the Arbitrator, he may make an award of this; for the Arbitrator is in place of a Judge, and his office is to determine *secundum allegata & probata*; and the duty of the parties which are grieved, and know their particular griefs, is, to give notice of the causes of controversie to the Arbitrator

Cooke lib 8. fo. 98. a

An arbitrator may make an award of one matter only if he have notice of no more.

bitrator, for they are privy to them, and the Arbitrator a ſtranger, and every one ought to do that which lies in his notice,

And if other conſtruction ſhould be made, moſt arbitrements might be voided: for the one might conceal a treſpaſs done, or other ſecret cauſe of action given him, and ſo void the arbitrement, *& expedit, reipub. ut ſit finis litium.* I ſhall cite but one caſe more upon the former ground, and ſo paſs this, which is thus.

Hob. reſ. p. 267. pl. 134 An arbitrement ſeeming not ſo large as the ſubmiſſion.

Barnes brought debt upon an obligation againſt *Greenly*, dated the 4. of September, to perform an award of all cauſes, till the day of the date: the Plaintiff pleaded the award *de primiſſis*, viz. of all cauſes til the 3: of December, and aſſigns a breach: the Defendant maintained the Bar, that the Arbitrator made no award, and verdict for the Plaintiff and judgment; here the award was a day ſhort of the ſubmiſſion. Upon this a Writ of Error was brought, but what iſſue it had, that my Lord *Hobart* ſaith he doth not know.

I do conceive Reader, that the difference

ference formerly taken, will resolve this Case, for if the submission were conditionall, then I think the award is naught, being not so large as the submission, but if it were absolute in such case I think it good.

But to this it may be said, that the Law will not intend any other matter of controversie to arise betwixt the third of September and the fourth without it be shewn; and for ought appeares, the award is of all causes to the fourth of September, because no other cause appeares then what is awarded: therefore *quære.*

Thirdly and lastly, an award may bee void, where it is not according to the submission in respect of the circumstances of it.

Page and *parkers* case was thus, in debt upon a bond conditioned for the performance of an award, so that it be delivered in writing, *sub manibus & siligis &c.* the Defendant pleaded the delivery of it in writing, and doth not say, *sub manibus & siligis*, and a performance, the plaintiff alleadged a breach, and judgment given for him, which was reversed in the Che-

Page and *Parkers* case in the Kings Bench.

quer Chamber, because the Defendant did not plead the award *sub manibus & sigillis*, for if an arbitrement be not made according to the submission, it is no arbitrement; if no arbitrement, no cause of action.

1.H.7.5 7.&8.6 the Queen and not *sub manibus & sigillis*, it had been nought.

So in this case I conceive, if the award had been pleaded *sub manibus*

Dyer, fo. 243.pl.56 21; H.8. Br.arbitr. 42.

So likewise if it had not been pleaded that it was delivered in writing, it had been void.

2.R.3.13 pl. 32. & 8.E.4.11. a.

And where there is a submission to an award, so that it be made and delivered to the parties in writing, at or before such a day: in such case, if it have not all the circumstances, that is, though it be made, yet if it be not delivered: and though it bee made an delivered, yet if it be not delivered to the parties, and though it be made and delivered to the parties, yet if it be not in writing; and though it have all these circumstances, yet if they be not all done, at, or before the day, in any of these cases the award will be void, as appears by the Books in the margent.

And

And if the Arbitrators award any thing after the time limited, it is void. 2. H. 6. 5. 18.

Two of one part, and two of another ſubmit themſelves to an award, ſo that the award be made and delivered to both parties, &c. A deliverie in this caſe to one of either party is not ſufficient, but it muſt be to both the intire parties. Kook. lib. 3. 103. H. gates caſe.

The reaſon of theſe caſes may be, becauſe (as I have formerly ſaid) that it is but a bare power or authority which is given to an Arbitrator, and therefore it muſt be ſtrictly executed according to the qualification and conditions annexed to it.

But the reaſon that comes more cloſe, is, becauſe that the ſubmiſſion is conditionall; *Ita quod*, or *Proviſio*, the award of the premiſes, or the ſaid award, &c. now it cannot be an award of the premiſes, or the ſaid award, if it be not in every thing, matter, and circumſtance, agreeable to the ſubmiſſion. And now I have done this part, of ſhewing you where an award ſhall be void, in regard that it is not according to the ſubmiſſion:

I shall now shew you before I go any further, what I intend by saying that the arbitrement is void, and hereupon I shall make this *quere*;

In what case an Arbitrement shall be totally void, and where in part only.

AND here I shall lay down these three severall grounds or differences, all warranted by our books.

22. H. 6. 49
36. H. 6. 1.
17. E. 4. a.
pl. com. fo. 396. a.
Cooke lib. 8. fo. 98.
Bishops case, 4. of the Queen
Dyer, fo 226. b.
cook lib. 5. fo. 77.
Salmons case.
Rudston & Yates case, cited arc. ward.

First, where the award is of one single matter only, or of many things, all out of the submission, in such case the award is totally void.

Secondly, where the award is of one single matter only, or of many things, all within the submission; yet if it be not of all submitted, where the award is conditional, or not agreeing in circumstances (as I have shewed you before) or if it be uncertain, impossible, &c. though but in part (as I shall shew you hereafter) in such cases likewise the award will be totally void.

Thirdly and lastly, where the award is of one thing onely, or of several

verall things, part within the ſubmiſſion, and part out, there the award is void onely as to that which is out of the ſubmiſſion, and good for the reſidue.

17. E. 4. 5. 18. E. 4. 22. b; 18. F. 4. 1. 21. F. 4. 75. 17. H. 7. keilway 42. & 45. Moore & Bedels caſe before:

To theſe caſes that I have cited I ſhall only adde one caſe, remembred before, and that is *Cornelius Lawrence* and *Carres* caſe which was thus. They ſubmitted themſelves to the award of *J. S.* concerning an Action of account pending: the Arbitrator made an award touching the account, and further award, that ever-of the parties ſhould releaſe to the other all actions: In this caſe it was adjudged that the award was good, as to the account which was ſubmitted, and void for the ſurpluſage. See fol. 9. b.

But note *Reader*, that though an arbitrement may be void in part, and good in part, as in the caſes aforeſaid, yet it cannot be totally void, as to one of the parties to the ſubmiſſion, and good againſt the othe; for as the award muſt be on both ſides (as I ſhall ſhew you hereafter) ſo I conceive the award muſt be equally reciprocall

An award void againſt one of the parties is void againſt both.

reciprocally obligitory to both parties, and if it be void against one, it will be void against both.

In Osbuths case Cook 19. 10-31.

And I conceive that *Moore* and *Bedels* case cited before, will wartant this: The case was thus, *Bedel* recovered by default in an action of Waste against *Moore* 45.l. damages and had judgment, after they submitted themselves to an arbitrement and an award is made that *Moore* should pay to *Bedel* 10. l. at certain dayes, & 15.l. at certain other dayes; and that for payment of the 15.l, one *William Salter* should bee ready to seal and deliver 16. Obligations, and the award was of other things also out of the submission: and in consideration thereof, that *Bedel* should discharge *Moore* of 20.l parcell of the said 45.l. recovered in the said Writ of Waste, and that upon the readiness of *William Salter* to seale and deliver the said 15. Obligations, *Bedel* should release to *Moore* all actione and demands, &c,

In this case *Moore* brought an action against *Bedel*, & shewed how that he payed the 10.l.&c. and assigned

a breach of the award that the Defendant had not made the releaſe upon requeſt.

It was reſolved, that though that many things are awarded to be done in ſatisfaction of another, (as in this caſe) and ſome are within the ſubmiſſion (as here the payment of the mony) and ſome out (as in this caſe, all to be done by *Salter*, being a ſtranger) and ſo void; and though that all were intended by the Arbitrators to be one full and entire recompence for the things, that the other ſhould doe in conſideration of this (as here the diſcharge of the 20. l. and the releaſe by the Defendant) notwithſtanding if any thing to be done or be given to the party, though that it be of ſmall value be within the ſubmiſſion, the award is good; ſo in this caſe judgment was given for the Plaintiff.

In this caſe it is apparent, that if what was awarded on the Plaintiffes part, had been all out of the ſubmiſſion, and by conſequence void, that then the defendant in ſuch caſe had not been tyed to perform what was awarded

awarded on his part, for an Arbitrement void againſt one, is void againſt both.

Rudſtone and *Yates's* caſe, cited before: An Infant and one of full age ſubmitted themſelves to an award, it was adjudged that the ſubmiſſion, and by conſequence the award, were abſolutely void as to the Infant; and being void as to the Infant, that it was likewiſe void as to the man of full age; for that the Award ought to be equally binding.

Hil. 14. car. in the king's bench. Rot. 115.

And now I have ſhewne you where an arbitrement ſhall be void in the whole, and where in part onely: It will bee neceſſary that I ſhew you where a bond for not abiding ſuch an award ſhall be forfeited, and where not.

Where an Obligation ſhall be forfeited for not performing of an Award, which is void in part, or in the whole, and where not.

THe Law as to this, takes this difference, betwixt an award voyd in the

the whole, and an award void in part onely. Where the award is totally void, there the bond can never be forfeited, or the non-performance of it; because that a void arbitrement, and no arbitrement, are both one in the judgment of Law.

And therefore no more then a bond can be forfeited, where there is a void award made. For as in the first case, hee cannot observe that which is not; so in the last, the Law requires not the observation of that which is void. Cook. lib. 10. f. 131. 7. H. 8. Keilway. fol. 175. a.

As for the Booke in 22. *Hen.* 6. where there was a submission by bond, and an award to pay 200l. to a stranger; and it is their said, that the judgment of the Court was, that though the award were void, yet it ought to be performed by reason, of the bond, for otherwise the bond is forfeited; and therefore saith the book, the Plaintiff traversed the award, *quod mirum* sayes *Brooke* for this is no award between the plaintiff and the Defendant.

Wel

Well might hee wonder at it indeed, for certainly, this cannot bee Law: but because it is sufficiently refuted by the Lord *Cooke* in his tenth Book, the place cited before, I shall thus pass it. But now on the other side, *where the award is void, in part only, there the bond may be forfeited for not observing the award, for as much as is within the submission, though not for that which is not contained in the submission*, and therefore if a breach be assigned in that part which is void, the action will not lye.

Mich. 41. & 42 [illegible] th Q[illegible]n in [illegible]e [illegible]mmon P[illegible]. 18. E. 4. so 22. [illegible] 3. a S[illegible] 41. & 42. of [illegible] in the common pleas ac.

In *Emery* and *Emerys* case cited before. *Glanvile* cited a case betwixt *Hellier* and *Rendals* in the Kings Bench, in which he said, he was of Counsell, where the Plaintiffe assigned his breach at a void matter, and after verdict for the Plaintiffe this was spoken in arrest of judgement; and judgment *quod quer. nihil capiat per billam*. But now a breach may be assigned as to that which is within the submission, and the Bond forfeited for it,

In 18. E. 4. it was awarded that one of the parties should pay 40l

to

to the other 10. l. in hand: and that hee and three others should be bound for the payment of the thirty pound residue. In this case by *Brian Neale*, and *Choke*, though that the award be void as to the strangers, yet it is not void as to the party which *submitted*, but he must plead the award *verbatim*, as the *Arbitrators* gave it, and in performance of it, he must say, that he himselfe was bound for the payment of the thirty pound rest, at a day, and shal not speake of the sureties.

So in *Cornelius Lawrence* and *Carrs* case cited before, it was adjudged, that where there is an award of more than is submitted, it is good for that which is submitted, and void for the surplusage, and that the Bond is forfeited, for not performance of that which is within the *submission*. See fo. 9. b. *Mich. 7. Iac. in the Kings Bench.*

In 17. H. 7. by *Vavisor* and *Frewick*. If A. B be bound to stand to the award of certaine persons of, &c. who award that the said *A. B.* and *E.* his wife shall levie a fine of the same Lands to the other party, though that the award be void as to the wife of *A. B.* yet the said A. B. is bound upon paine of forfeiture of his Bond, to do it. And agreeing with these cases, is *Moore* and *Bedels* case, so often remembred before. 17. *H.* 7. *Keilway* fo. 42. *pl.* 10. & 45 *pl.* 2: *In Osburns Case, Coke lib.* 10. 131, *b.*

And we must observe, that where a man is tyed by promise to stand to an award, it will be the same with the Obligation, as to those things before laid down, as you may see in *Moore* and *Bedels* Case.

And now having declared unto you in what case a Bond shall be forfeited for not performing of an award, and in what not. It will be necessary in the next plac (before I proceed) to cleare the point of notice of the Arbitrement, that is,

Whether the Compromittors which have bound themselves to stand to an award, are bound to take notice of it at their own peril, or not.

8: E. 4. 1: 20, 13. & 21. This very point is as much controverted and debated in 8. *Edw.* 4. the Dutchess of *Suffolks* case, by all the Judges in the Chequer chamber, as it is possible for a case to be, and there is as much variety of judgment and opinion in it, as ever I met with in any one case of the Law.

And though I do conceive the better opinion in that case to be (for it is not resolved) that the party who hath bound himself to stand to the award, must take notice of it at his own peril, because as *Caterby* saith excellently wel, though that a man by reason shall not be compelled to do a thing without having notice of it, yet a man

man may binde himselfe by his deed to do a thing, the which by reason he should not be bound to do.

Yet I conceive the judgment of these learned men, viz: *Fairfax, Starkey, Yelverton*, and others, ought not to be so undervalued, especially upon no less than four severall debates of the point, as to be called a sudden opinion, as it is in *Fraunces* case in my Lord *Cookes* 8. Book. But for the law in this point, certainly it is now setled and in peace, that the Compromittor must take notice of it at his own peril, having bound himself to stand to, and observe the award. *Cook. lib. 8. f. 92. b.*

In *Hen.* 7. the opinion was clear (saith the Book) that the *Obligor* ought to take notice of the award at his own peril, because he hath bound himself so to do. *1. H. 7. f. 5.*

And in 18. E. 4. by *Bryan Vavisor*, and *Catesby*, Iustices, where an award is made the party ought to take notice of it at his own peril, and they say, that so it was adjudged in the time of the same King, in the Kings Bench. *28: E. 4. 18: a.*

Which Cases are agreed for *Law*, in my Lord *Cookes* 4. Booke, as also in his his 8 Booke, *Fraunces* Case, where it is said, that so is the Law without question. *Cook. lib. 4. f. 82. & lib. 8. fol. 9. b.*

And the reason given there is, because

when a man binds himself to do, or perform any thing awarded by a stranger, he doth by this, take notice at his perill, of all things incident to this, for the saving of his *Obligation.*

7. H. 8. *Keilway* 175. pl. 8. And therefore we may safely conclude the booke, in 7. H. 8. where there is an opinion to the contrary to be no Law, but of this sufficient: *I* shall now proceed to shew you in what respects, or for what other reasons an award may be said to be void in Law: the first ground I laid down was where the award is not according to the submission, the next shall be the incertainty.

Where an award shall be void in Law for the incertainty.

IN all cases where the award is uncertain, it is void, for the arbitrators (as I have shewed before) are Judges, and their judgment must be certaine; for *judicium debet esse certum.* And the law doth in all cases abhor uncertainty, because it is the mother of confusion.

Coke lib. 5. 10. 77. a. 78. a. *Samons* case, the Arbitrator awarded that the one of the parties should enter into

a bond to the other, and doth not award in what ſumme, the bond ſhall be adjudged void for the incertainty.

For as the book ſaith, the arbitrators are judges of the caſe, and their judgment awarded, ought to be certain, ſo that by this the controverſie be decided, that it may not be the cauſe through the uncertainty of new controverſie.

Marcham and *Jennings's* caſe, in debt upon an *Obligation*, to ſtand to the *arbitrement* of *Poly* of Grayes-Inne, for the Title of Coppy hold in queſtion betwixt the parties; *Poly* awarded that *Jennings* ſhould pay to the Plaintiff 20. marks, *viz.* 61. 13. s. 4 d. *ſuper vicecimum, primum diem Maii* and 61. 13s. 4d. at the feaſt of *St. Michael* next following, and that the Plaintiff ſhould releaſe to the defendant all his right in the Copy hold, *ſuper predictum primum diem Maii* (omitting *vice ſimum*) where there was no firſt day named before: *Mich 4: Iac. in the Kings Bench. Rot. 32.*

The defendant pleaded that there was award made, the plaintiff replyed, that there was an award made and ſets it forth and that the Defendant hath not paid the 61. 13 s. 4d. upon the firſt day of May, the defendant demurred, pending

ding that the arbitrement was void for the uncertainty, *viz.* in that it was to be paid *ſuper predict. primum diem Maii*, where there was no firſt day named before *Tanfield* Iuſtice, the *Arbitrement* is void in the whole, becauſe that the day to which the releaſe is referred to be made is uncertaine, and ſo it doth not appeare when it ſhall be made & for that it doth appear, that the intent of the *Arbitrator*, was that it ſhould be made at a day certaine, and this is not certainly expreſſed, it is void. And though that the *arbitrement* conſiſts upon divers parts, and ſome are certain, yet if any part be uncertain all is void, if it be material and concern a party to the *ſubmiſsion*, as here it doth. And it is not like the caſe of 19. E 4. 11 for there the award which was void for part, that part concerned ſtranger & not Party to the *arbitrement*, but here it concerns both parties to the *arbitrement*. And though that there be another clauſe, that the Plaintiff ſhal make further aſſurance; yet his intent was that the other ſhould be alſo done, and becauſe that that is void for the uncertainty, all is void, for an award is like a judgement, which if it be imperfect in any part, it is void for the whole, and after, judgment was given for the

the Defendant.

Note here *Reader*, that if an award be made of severall things, all within the *submission*, if it be uncertaine in part only, it is totally void, which doth agree with the differences which I have formerly laid down.

In 8. E. 4. cited before, by *Yelverton*, if an award be made, that an action shal be conceived between the parties, by the advice of S. & F. the award is void; because, saith he every *Arbitrement* ought to be ful and certaine, and so it is not here, until the said S. and F. limit the action. 8. E. 4. 1. a.

I must confes the greater opinion in this case is, that the award is good, but I conceive the opinion of *Yelverton* (as I formerly said) to be the better opinion, because the judgment of *arbitrators* ought to be final, as I shall shew you hereafter, and nothing ought to be referred to the judgment of other persons, or to the *Law*, for by the *submission* (which must be their rule) they themselves are to end all Suites and controversies betwixt the parties, and if they do not, their award is not according to the *submission*, and therefore void.

Rudston and *Yates* case (which I have put often before, though to other purposes) was thus, an Infant and a man of ful

Hil. 15. *Car. in the Kings Bench, Rot.* 313. 8 E. 4. 1, age, ſubmitted themſelves to an award, the *arbitrators* award that the Infant ſhould pay 5l. to the other party, for *quit Rents, and other ſmall things, &c.* 'Tis true, that in this caſe it was adjudged (as I have formerly ſaid) that the ſubmiſsion of the Infant was abſolutely void. *But* it was alſo adjudged that the award in this caſe was void, becauſe of the uncertainty of theſe words, *other ſmall things*, it not appearing what thoſe other things were; and it may be they were ſuch things, for which an Infant by the law may not be chargeable; and by the ſame reaſon they have aſſeſſed 5l. they might have aſſeſſed 20 l.

Here likewiſe note Reader, that the Award being of things within the ſubmiſſion was adjudged totally void for the uncertainty of part only.

Paſch. 15 *Car. in the kings bench:* Two ſubmit themſelves to the award of I. S. who awards that one of the parties ſhould pay a certaine ſum to the other, and that the other in conſideration of this, ſhould diſcharge him of a bond, in which they two were bound to a third perſon in an 100l. *aut eo circiter.* In this Caſe it was objected that the arbitrement was void, becauſe the arbitrators have arbitrated a thing uncertain, by reaſon that it doth not certainly

certainly appear of what ſum the bond was in which they were bound, and the *eo circiter* is utterly uncertain. Hob. Rep. p. 68. p. 5.

But the opinion of the whole Court was, that there was a ſufficient certainty, becauſe that lyes not in the power of the *arbitrators* to know the direct ſum, and a ſmal variation is not materiall, and therefore the award was held good. * Tamen quere, becauſe Hob. Rep. ubi ſupra ſeemeth contrary.

Nichols and *Grummons* caſe, there the arbitrators award that one of the parties ſhould pay 31. 10 s. to the other, and doth not ſay for what; ſo that it may appear whether it concerned him, or no; it was held void for the uncertainty. And if this ſhould not be void, it might be very miſchievous to the party, for by this meanes he might be doubly charged: For in an action brought for the ſame thing, for which this money is awarded to be paid, I doubt the arbitrement could be no plea in bar of the action, becauſe it cannot appear, whether it were for the ſame thing or no. *And* the averment of the party can never declare the intent of the arbitrators, and ſo help the uncertainty of other imperfection in the arbitrement, as is agreed in this caſe and reſolved alſo in 7. and 8. of the Queen *Dyer* and *Girling* and *Goſnolds Caſe* here

An Averment of the parties cannot declare the intent of the Arbitrators, *Mic.* 7. & 8. of the queen. Dyer, fol. 242. pl. 52 Paſch. 4. Iac. in the Kings bench. This caſe commenced, Paſc. 3 Iac. Rot. 478.

here immediately following.

Girling and *Gosnolds* Case in the Kings Bench, was thus, *debt* was brought upon a Bond for not observing of an award, which was, that the defendant should pay to the Plaintiff 20 l. *per annum*, during the continuance of two leases for yeares in being, of the Parsonage impropriate of *Yarmouth*, &c. and it was not shown in the award for what tearm the leases were; but the Plaintiff shewed for what tearm they were; and the continuance of them, and alledged a Breach for non-payment of the 20 l. &c.

In this case it was objected, that the Award was void for the uncertainty, because that it did not express for what time or tearm the leases for yeares were, and that it could not be aided by the averment of the party; and for the uncertainty, *Samons* case was cited, for the averment, my L. *Dyers* Case, which I put you before.

But by *Popham*, Chiefe Iustice, the award is good, he agreed that where the award is uncertaine, it is void, and that the parties can never aide it by an averment; to shew the intent of the *arbitrators*, if it be not expressed in the award, either directly, or by circumstance.

But

But he said, that if *Samons* case in *Cookes* Book had been, that the party should be bound in such a sum, as he was bound in to stand to the award or by other reference, so that it might be reduced to a certainty, and this infallibility, in such case the award had been good.

§. An Award which re. fer, or may be reduced to a certainty is good.

And in this Case the payment of the 20l. *per annum*, is referred to the continuance of the leases, which is certaine, and therefore he conceived the award to be good. Of the same opinion were *Williams*, *Yelverton*, and *Tanfield*, Justices.

Here Reader you may observe that an award which is referred, or may be reduced to a certainty, is good enough, agreeing with that rule in Law, *certum est, quod certum reddi potest.*

This shall suffice to shew in what case an award shall be void for uncertainty. The next thing considerable is,

Where an award shall be void in Law, for impossibilities

Whereseever the Arbitrators award a thing impossible to be done, in such Case the award is void, and by consequence the bond not forfeitable for the non performance of it, as I have shewed before,

for

for it were a moſt unjuſt and unreaſonable thing for to make a man incur a penalty for the not doing of that which is in it ſelf impoſsible to be done.

In 8. E 4. by *Yelverton*, if an *arbitrement* be made to do a thing impoſſible, the party for the non-performance of this ſhall not loſe his *Obligation*, notwithſtanding that he be bound to ſtand to the *arbitrement*, becauſe he cannot by any poſſibility do it.

8. E. 4. 10. *a.*

As if they award that *I* ſhall make the *Thames* to run over the ſeller of *Weſtminſter* within a day, or that I ſhall pull down *Pauls Steeple* with my hands within an hour, or the like impoſsibilities; becauſe I cannot perform it, *I* am excuſed of my Obligation.

So in 8. E. 4. by *Moile*: if the *arbitrators* award a thing impoſſible, as if I put my ſelf upon an *arbitrement* this day, and they award that I ſhal pay a ſum certaine at a day which was before the *ſubmiſsion*, I ſhal not forfeit my *obligation* for the non-performance of this *arbitrement*, becauſe that it was impoſsible to be performed

8. E. 4. 1. *b*, & 12. *b* 9. H 6. 16 *by Keble* 19. E. 4. 1 *by Nele* & 22. H. 6. 4. 6. *ac.*

In 21. E. 4. *By Genney*: if an award be, that I ſhal releaſe all the right which I have in the Manor of I. S. in the County of M. to *Pigot*, or levie a fine to him, and in truth there

21 E. 4. 48. *a.*

there is no such Mannor, this award is void, because it is impossible. 21. E. 4.

So if the award be, that he shal release his suit against B. and he hath no suit against him, this is a void award. 38. 39.

But note Reader, *where the thing awarded is in it selfe feasable and possible to be done though in relation to him that is to do it, it may not be possible, yet because it carries with it no apparent impossibility, the award in such case is good.*

If the arbitrators award that he shal pay 1000. Marks presently, he is bound to do it and it is the folly of the party to put such confidence in the parties that are chosen *arbitrators*. 8. E. 4. 1. *by Meil:*

So they may arbitrate things, the party cannot doe (which are the very words of the Book) as that the Defendant shal pay 10 li. in mony, where paradventure he never had 10 d. or that he shal pay 20. Tuns of Wine, or the like, where he hath not one, in these cases the award is good. 19. E. 4. *by Nele & Choke.*

In debt upon a bond, to stand to an award the defendant pleaded that the arbitrators did award that the defendant within eight days after the award would go to the house of sir *Henry Collet*. and that he should bring a bale of wood, &c. and the defendant saith that there was not any bale of wood in the house of the said *Henry Collet* within eight days after the said award. 9 H. 7. 1. *b.* *quere*

By

By *Keble* this plea is not good, because he hath bound himself to stand to the award, and to perform it, which he must do, otherwise his *Obligation* is forfeited. Besides this is a thing feasable, for though Sir *Henry Collet* had not any Bailes in his house if he would have performed the condition, he ought to have bought certaine *bails*, and to have brought them to the house of Sir *Henry Collet*, &c. and then departed. &c. and because he hath tyed himself to perform the *arbitrement*, he ought to do it, if it maybe by any possibility done.

The reason of all these cases is, because it is the folly of the parties to make choice of, and to put so great confidence in such persons, whom they chose to their arbitrators, and it is no news that a man should suffer through his own folly.

Again, where the thing awarded is in it selfe possible, and possible also as the party who is to do it, yet,

Where the thing awarded lies not in the power of the party himself, without the aide of a third person, in such case the award is void.

8. E4. fo. 2. a. by Yelverton 22 H 6. 46. ac. Two submit themselves to an *arbitrement*, the *arbitrators* award, that one of them shall make I. S. to pay 20 l. to the other the award is void, because in this case it

lyes in the will of *I. S.* whether he will do it, or no, and the party hath no means to enforce him.

Two submit themselves to the award of *I. S.* who doth award one of the parties to pay to the other 40*l.* 10*s.* in hand, and for the 30*l.* residue that he find three severall persons to be bound every one in 10*l.* to the party.

17. *E.* 4: *fo:* 5. *b.* 19 *E.* 4 *fo,* 1.

In this Case by the opinion of all the Justices, the award was void.

And there it is said that in an *arbitrement* the law intends, that the *arbitrators* should be indifferent and equall Iudges betwixt the parties, but what indifferency is this, to cause a man to make such a thing to be don, which lies in the will of a stranger whether he will do it or no?

19. *E.* 4. *I.* 1. 5. *H.* 7. 22. *b:* *ac: where I may do the thing awarded my self, or inforce it to be done, the award is good.*

As put the case (saith the Book) that an *arbitrator* will award that *I* must cause the King to give the Tower of *London* to the other, such an award is clearly void.

And by *Brian*, in 19 E. 4. an *arbitrement* that the party before such a day shall levie a fine before us, is good; but if the *arbitrement* be, that he shall command us to sit here, and to make him levie a fine that is void for he hath not power to do it.

5. *H.* 7: *ubi supra* 21. *E.* 4. 36. 20.

So in 5 H. 7. an award, that the parties shal

shal discontinue and make retraxits of the suits, is good, the reason of these cases I conceive may be, because that though these things cannot be done without the act of Court, yet here is concurrence of the act of the party also, which doth produce the act of the Court.

21. E. 4. fo 40. And *Hussey* chiefe Justice, in 21. E. 4. takes the true difference, sayes he, there where the act may be done by my selfe, without the aid of a third person, in such case I ought to do it, but where it cannot be done without the aid of a third person, there it is otherwise.

Pasch. 15. *Car. in the Kings Bench.* There was a case which was in this King, which I cited before to another purpose, which was thus, an award was made, that one of the parties should pay a certain sum to the other, and that the other in consideration of this, should acquit him of a Bond, in which they were both bound to a third person in a 100l. &c.

In this case, the award was held good, and this diversity was taken by the Court, where the arbitrators arbitrate a party to do a thing which lies in his power without the aide of a third person, there the Award is good, otherwise, where it lyes not in his power without the aide of third person.

And

And here it was agreed, that the thing awarded was feasable by the party himself, without the aid of the obligee, and this difference was taken by the Court, where the bond was forfeited, and the penalty incurred, and where not; where the day of payment was not incurred, there the payment of the money at the day would be a good discharge of the Bond, and by consequence a good acquitall of the party, but where the Bord was forfeited, there it could not,

And *Jones* Justice said, that he might compell the obligee upon payment of the money, though the Bond were forfeited, to deliver the Bond by *subpœna* in Chancery, or that he might suffer an action to be brought against him, and then discharge and pay it.

According to the opinion of Justice *Jones* in his former case it was ruled, that where *arbitrators* do award, that whereas such a one was seized to my use, that I should cause him to make a release to the other being in possession, that the award was good; because that I have such an interest and power that I may compell my feoffees to do it by *subpœna* in the Chancery, 17. *E.* 4. *fo.* 5. *b.*

Thus you see, that where I do the thing awarded my self, without the aid of another, or may inforce it to be done,

in such case the award will be good: the next thing to be considered, is,

Where an award shall be void by reason of the not indifferency of it, or because it is made of one side only.

As Arbitrators are indifferently elected so the *Law* intends (as it is said in 17. E. 4.) that the arbitrators should be indifferent and equall Judges between the parties, which they cannot be, if they do not give satisfaction to both sides, and therefore in such case, where the award is not mutually satisfactory, it is void.

It was an ingenious saying of *Hearn* in *Emery* and *Emerys* case, cited before; arbitrators, saith he, are indifferently chosen, so that both the parties may have recompence in regard of the Bond, which is *equale pondus* to both, and an arbitrement, saith he, is like a fine, wherein the Judges are arbitrators, one hath the land, *& pro hac concordia*, the other hath money.

7. H. 6 fo 40: by Strang, 20. H. 6, 191. 2. ac

If the defendant plead an arbitrement made betwixt him and the plaintiff, of all quarrels between them &c. who award that the Defendant should go quit of all actions and quarrels had by the plaintiff against him; and nothing is spoken of the quarrels which the Defendant hath against the

the plaintiff, the arbitrement is void.

So if two submit themselves to an award of all Trespasses, and an award is made, that the one shall make amends to the other, and nothing is awarded that he shall do to him again, this is a void award, because all is for the one party, and nothing for the other. 39. H. 6. by Driscor.

In Trespas for taking away of goods, the Defendant pleaded an arbitrement, which awarded, that because the Defendant had taken away the goods of the Plaintiff, that he should re-deliver them in satisfaction of the Trespas, which he did and there by the better opinion the plea is nought, because that re-delivery of his own goods, can be no satisfaction for the taking and detenining of them. 12. H. 7. 14. 15.

And an *arbitrement* is no plea in trespas, if the Defendant do not say that the arbitrators awarded that hee should give somthing to the Plaintiffe more, or less, in satisfaction, for that is a satisfaction to neither side; the Plaintiff is not satisfied for the trespas done him, nor the Defendant discharged thereof without some satisfaction for the wrong done by him. 43. E. 3. 28.

In trespas for goods, the Defendant pleaded an arbitrement that he should re- 45. E. 3. 16

retain part of the goods, and ſhould deliver the reſt, which he hath been alwayes ready to deliver; and demands judgment, this is conceived to be no plea; and this caſe was put in debt of 10 l. the defendant pleads an *arbitrement* that he ſhould pay part, and not the reſt, or to pay the moiety and retain the other moiety, this no plea.

Br R. arbitrement. 7:

Tis true, that *Brooke* makes a *quære* of the caſe, becauſe it was not adjudged: but withall concludes, that it ſeems it is no plea: and certainly ſo is the Law. For if an award for the re-delivery of all the goods, could be no plea, becauſe no ſatisfaction (as the caſes in 2. H. 7: cited before) much leſs an award, for the re-delivery of party only, for this is is no other then to endeavour to ſatisfie one wrong with another.

9. H, 7. 16 a

For the latter caſe, as it is ſaid by *Keble*, in 9. H. 7. that it is againſt the Law for the Arbitrators to award the party to pay more than of right he ought to pay. So certainly it is as much againſt the Law, to award the party to pay leſs then of right he ought to pay, for there is no equality nor ſatisfaction for that which is more or leſſe in either Caſe.

Hob. Rep pa. 66. pl. *Nichols* and *Grummons* caſe cited before: here

here was an award, that the Defendant ſhould depart from his houſe, wherein hee dwelt, &c. and ſhould pay 3 l. 10 s. to the Plaintiff, and it doth not appeare for what, &c. In this Caſe it was adjudged, that the award was void, becauſe it was of one ſide only. *But now, where there is either an acquitall or an expreſs ſatisfaction on both ſides, or of one ſide only, with an implied diſcharge of the other, in ſuch caſe the award will be good.* 19, H. 6.

It is a good award, that becauſe the one party hath done more treſpaſſe to the other, than the other to him, that he ſhall give a penny in ſatisfaction, and that the other ſhall be quit againſt him. 37. 20. H 6. 19. 22. H. 6. 39. 9. E. 4. 44 8.

An *arbitremeut*, that the one hath done Treſpaſſe to the other, and that the other hath likewiſe done Treſpaſſe to him, and therefore that the one ſhall be quit againſt the other, and that the other likewiſe ſhall be quit againſt him, is a good *arbitrement*. 22. H 6. 39. 19. 4. 8 a. 10 H. 6. 14. 1 of the Queen, Dyer, f 356 a. p 39.

In treſpaſſe for the taking away of goods, though an award that he ſhall re-deliver the goods to the *Plaintiff* in ſatisfaction, be no good award: yet by *Keble* and *Tremail*, if the award had been that he ſhould carry them from ſuch a place to ſuch a place at his own coſts, this had been good. 12. H. 7. 16. 1

Dyer, ubi supra. And by *Keble*, if a man take my horse from me & we put our selves upon *arbitrement:* in this case, if the *arbitraters* award that he shall keep the horse until the Feast of Easter, and then to deliver the horse; this is a good award, for he shall be charged with the meat of the horse, which is a profit and a vaile to me; and I am discharged of the keeping and the meat of the Horse, which is my profit.

Thus you see, *That a small or seeming satisfaction, only so the award be on both sides may be good enough.* So in *Dyer* it is said, that there must be somthing done by either party to the other, commodious in appearance at the last.

The reason of these cases may be, because that the arbitrators are made judges of the matters in controversie between the parties: and therefore where the submission is of things uncertain, as trespas, or the like, in such case if the arbitrators shall adjudg the offences to be equall where they are not so, and so a mutuall discharge on both sides; or shall award the payment of 10 l. where there was not 5. s. damage; or but a penny, where paradventure there might be 10 l. damage. In such case there is no remedy, because you have made them your Judges,

and

and tyed your ſelfe to ſtand to their judgement. Otherwiſe it may be where things certain are ſubmitted, as debt, or the like, as I have ſhown you before.

And now I ſhall put you a caſe or two, to the former, *Where there is an expreſs ſatisfaction of the one part, and an implied diſcharge of the other only, and yet the award good.*

An arbitrement, that the Defendant ſhall pay a penny to the Plaintiff, in ſatisfaction of all manner of actions, which he hath paid, is a good barre. 22. H. 39 by Moil

Nichols and *Grummons* caſe cited before, if an award be, that an obligor in a ſingle obligation ſhall pay the debt, this is a void award, without there bee a proviſion for his diſcharge; becauſe payment is no diſcharge in that caſe without an acquittance. Hob. rep p. 68. pl

But if the award be, that he ſhall pay 10l. for a Treſpaſs, it is good; becauſe a ſatisfaction implies diſcharge. 22. E. 2 ac.

So an award, that the Defendant ſhall pay a debt that was due to the plaintiff there which he alſo promiſed to pay, is good. for the award is as wel of the one ſide, as the other; becauſe the one receives the money, and the other is diſcharged of the debt, and of his promiſe to pay it. Cook. li 8. fo. 6 a, Baſ. poles eſſays

Thus you see, that where an award is expressly of one side, and implyedly only on the other, that in such case the award is good. The next thing to be considered, is, that though the award be on both sides, yet, *Where there is no means by Law for either party to attain unto that which is awarded him, the award is void.*

22 H. 6. 12. 18, & 19, a. IN Trespasse, The Defendant pleaded an award, that the Plaintiff should pay to the Defendant 10 l. and release to him all actions of Trespasse, and after the Defendant should release to the Plaintiff all trespasses, which he was alwayes ready to do, and is yet, if the Plaintiff had payed the 10 l. and released. In this Case this was held no good plea, because, that if the Plaintiff had payed the money and released, he could have had no remedy to inforce the Defendant to have released, and therefore this award is no bar of the action.

19. H. 6. 37 b. So in a writ of forger of false Deeds, the defendant pleaded an arbitrement, that the 38. Plaintiff should be non-suited in that writ, and that the defendant who hath an assize against the plaintiff, should be non-suit in this, and saith, the day is not yet come, and demanded judgment, in this case the plea was held nought, because, that if he had been non-

non-suited in this action, he had no remedy by specialty, or otherwise to inforce the defendant to be non-suit in the assize.

And here *Newton* said, should this be a good plea in a Writ of for ger of false Deeds for the defendant, to say that there was an award, that the plaintiff should have an acre of land of the defendant in amends, I say (saith he) that he could not, if he doth not say, The which he hath conveyed to him, for there is no remedy in this Case to constrain him to convey it to him.

If an arbitrement be that the defendant shall be bound by such a day, which is not come; he shall not plead this in an action of trespass, for then the plaintiff should be barred and should have no action to compel the defendant, to make the Obligation: Note Reader, that these cases must be intended where the submission is without specialty, otherwise he were not without remedy.

In this case there are these three ground observable and warranted by the books.

5, E, 47. a, 45. E. 7. 16. a 28. H. 6. 12. 2. H. 1, 4, 5. E. 4. 7. 19. E, 4, 8. 20, H. 6. 12. Keilway 12 1. a. 19, H, 38. a. by Nuton p. 5. 28. 19 A. 6. 37, by Ascue & Newton 9. E. 4. 44, 4. by Nedham.

First, *Where the Award is for payment of Money at a day to come, there the award is good, because an action of debt*

debt will lie, for the money upon the arbitrement if it be not paid, or the party may resort to his action again, if he please.

Secondly, *though the award be of a collaterall thing for which there is no remedy, yet if it be executed, it is good.*

Thirdly, *and lastly, where the award is of a collaterall thing not executed; yet if the submission be by specialty, the award is good.*

20 H. 6. 18, 19. 28. H. 6, 2. 2. H. 4. 4. 9. E. 4. 51, 5. E, 4. 7. 19. E. 4. 8. 45, E, 3, 21. 6. & 9, H, 6, 12, 20, H, 6, 18. Br. arbitrement 30, 2. H, 4 1. 19. H. 6. 37. 5. E. 4. 7. a, 7 H. 4. 41.

Vpon these gronnds you may observe these four rules to direct you, where an arbitrement shall be a good plea in Barr of an action in these cases.

First, *Where the award is for the payment of money, for which you have remedy and the day of payment not past; in such case the award is a good plea in Bar of the action.*

Secondly, *where the day of payment is past, it is no plea in Barre of the action without pleading of payment,*

Thirdly, *Where the day of payment is past, yet if there be no default in the Defendant, in such case, I conceive, the arbitrement not executed, is a good plea in barr of the action.*

Fourthly, and lastly, *where the award is of a thing for which the party hath no remedy, though the day be not yet come, in which the thing ought to be done or delivered in this case the award is no plea in bar of the action.* Accordingly

ding to these differences it hath been ruled in a case in the Kings Bench, which was thus.

The Defendant in trespass pleaded an award that he should instantly pay 20. s. to the Plaintiff, and so demanded judgment of the action; by *Flemming* chiefe Justice, *Williams* and *Crooke* Justices, it was holden, that the plea was nought, because that he did not shew the money was paid, and these differences agreed. *Mich. 9. Jac. in the Kings Bench.*

An arbitrement pleaded in bar of an action, where the Defendant hath not performed the thing, and the day past, is no good plea. But where the day of the performance of the thing awarded is to come, and the doing of the thing awarded may be compelled by action, there the arbitrement is a good plea in bar of the action.

And by *Flemming*, if the arbitrement be to make a release, or such other collaterall matter, which the defendant cannot be enforced by action to do, in such case the arbitrement is no good plea in Bar of the action, though the day of performance be not yet come.

And you must know Reader, that where the arbitrement is to make a Release, or such other collaterall thing, and the day to come

come, though the submission were by speciality, yet the award would be no plea in bar of an action, because that cannot inforce the doing of it, though it may be forfeited for the thing not done.

And so saith *Yelham* in 9. E. 4. though 9. E. 4. 4 a. the arbitrement be void to this intent that the plaintiff hath no action to compel the defendant to make the release, yet it is good to this intent, if the party do not perform it, that he shall forfeit the penalty of the obligation. But enough of this, the next thing considerable is,

Where an award shal be void because it is not final.

The arbitrators (as I have often told you) are Judges of the matters in controversie referred unto them, and their award is a judgment: now *iudicium*, must not only be *certum* (as is said before) but *determinatum* also, it must determine the matter in controversie.

Tis true, an award may in such cases (as I have shewed before) be good of part of the things only submitted, 19. H. 6. 35. but we must understand this so, that the award must be final as to that part, or else it will be void. An award that either party shal be non-suit against the other in actions commenced by them is void.

void, because it makes no end of the matters in controversie. And every Arbitrement, saith the Book, ought to make an end and final determination of the things in dispute and controversie; which it doth not in this case, because that notwithstanding the non-suits, they may commence their Suits, *de novo*.

And upon this ground, as also the former authority, I conceive that the *Book* in 5. *H.* 7. is no Law, where there is an opinion that an award of a non-suit, may be good, but it is upon this reason, because it is not only the act of the Court, but the act of the party also. *But* if it were wholly the act of the party, yet for the reason before given, because it is no final conclusion, I conceive it cannot be good, for this is but like blowing out of a candle, which a man at his own pleasure lights again. 5. *H.* 7. *fo* 23.

So in all these *Cases* that *I* have put you before, where the award is of one side only, it is void also for this reason, because it doth not determine the controversies between them, and the controversies cannot be ended, without they be ended in respect of both parties. *So* likewise in the Cases that I have put you before, where the award is uncertain, it is also void for this cause for that is not final. For an uncertain award *Cook. lib.* 5. *fo.* 78. *a Samons Case.*

cannot

decide the matter in controversie, but is more apt to beget new strifes and variances, than to conclude the old.

In 8 E. 4. an award is made, that an action 8.E.3 11 a. shal be conceived betwixt the parties by the advice of S. and F, I do conceive in this case the award is void, because it is not finall, for this concludes not the controversie, but leaves it to the judgment of Law. See fol. 168 b.

Warley, and *Beckwiths* case, in debt upon Hob, rep. p. 306. pl. 28. 1. a Bond to stand to an arbitrement, the arbitrators award that the Defendant shal pay severall summes to the Plaintiff which were alledged by the Plaintiff to be done unto him. And further that if the Defendant at, or before the fast of S. *Andrew* the Apostle, then next following, should before the said *arbitrators* disprove the *debt*, or any part thereof; then so much should be deducted out of the payment of the severall summes aforesaid, &c:

Tis true, I finde no judement in this case, yet I conceive the Law will be somwhat strong in it, that the *arbitrement* is void, because it leaves the matter in suspence, and undecided, whereas it ought to be final and concluſive. And besides, this is upon the matter a reserving of power to make a sec-

cond

cond *arbitrement*, which I conceive they cannot do.

I shall conclude this point with that ingenious conceit of *Herne* in *Emery* and *Emerys* case, remembred before, only a word or two more of his added. 41. & 42. of the qu. in the Common Pleas.

An *arbitrement* saith he, is like a fine, wherein the Judges are arbitrators; one hath land, *& pro hac concordia*, the other hath money, therefore fines upon condition are refused, because not Finall.

So the Law doth reject all arbitrements that are conditionall, or which leave the matter in controversie, in suspence or unconcluded. For as a Fine is so called, because that it doth *finem litibus imponere*; so the proper work or office of an arbitrement, is to put an end to controversie;

So *Yelverton* in 8, E. 4. An arbitrement, saith he. is used for the Common-weale, for to deside debates and wrongs amongst the people, as Fines are, here he likewise joyns them both together. 8. E. 12. b.

And the very words of the condition in every bond to stand to an award, will sufficiently instruct the arbitrators what they are to do in this behalf (which certainly prudent Antiquity put in to that very purpose) where the parties do submit themselves

selves to the arbitrement, sentence, and finall determination of the arbitrators: and therefore the award is not according to the submission, if it be not final: the next thing to be considered is,

Where an award against Law shal be void.

IT may be aptly demanded, what I intend by an award against law, for every award that is not according to Law, as where it is uncertain, impossible or the like, (as *I* have shewn before) may be truly said to be against Law. and therefore this wil be but *actum agere*, to shew, that an award against Law shall be void.

By *Billing* in 8. E. 4. an award which is
8. E. 4. 12. b. impossible is against the Law, for (says he) the *Law* is upon possibility and reason, therefore that which is impossible is against Law:

19. E. 4. a So by *Nele* and *Choke*, an award which is made in parcels, or which enjoynes a thing not in power of the party, is against law.

9. H. 7. 16 a. By *Keble* also in 9. H. 7, an award that a man shal pay more than of right he ought to pay, is against law,

Tis true, that all these, or the like, in a generall acceptation of the words may be said to be against law, because they do not agree with Law.

But in a more particular and restrained acceptation of the words, that is properly said to be against Law: which is either *malum in se*, or *malum prohibitum*; that is, either against the Commandments of God, or the Decrees, Maxims, and Principles of the Law, as appeares by the books in the Margent. And in this sense properly I conceive the Law is to be understood, where it speaks of an award against the Law. *Cooke. Littleton fo. 206. b. 42. E. 3. 6. 2. H. 4. 9, 19. H. 6. 55.*

And therefore if an award be, that the defendant shall kil or rob I. S. or that he shall maintain the plaintif in such a suit; or that he shal be bound to the Plaintif, being a Sherif, to save him harmless if he shal imbesila writ, or suffer an escape; or that he shall forge such a Deed or writing for the plaintiff, or the like in such cases, I conceive, the award will be void, because it enjoyns things against the Law. But of this sufficient: The last and last thing to be considered is.

Where an award made at several times or by parcels shal be void. 19. E. 4. 5. a. by Choke.

AN award, that the Defendant shall pay a certain sum of money to the plaintiff, and that the surety for payment

thereof should be by the advice of the arbitrators, this by *Choke* is a void award, because that the *arbitrators* cannot make their award twice; for every arbitrement ought to be made entirely, and not by parcels. And here is first an award for payment of the money; and then here is another part of the award for the sufficiency of the security, and these at severall times, which cannot be.

39 H. 6. 9. By *Danby*, Justice, if the arbitrators arbitrate part one day, and part another day, and give their judgment, there the second is void; but they may commune upon one point one day, and another, another day; so that they do not give their judgment *nisi unica vice* for all:

17. H. 7. *Keilway f. 43. pl. 10.* And by *Yaxley*, an arbitrement void in part, is void in the whole; for an arbitrement cannot be made by parcels.

I conceive Reader, that this point wil stand upon this difference, where there are several awards made, and where but one award made at severall times, or by parcels. *I* conceive they cannot make several awards; first, because that were not agreeable to the submission; in which the parties binds themselves to stand to the award and arbitrement of the arbitrators; and by these words in the

the ſubmiſsion, they have no power to make ſeveral awards or arbitrements, and when they have made one arbitrement, they have executed their power and authority, and therefore a ſecond arbitrement will be void. And again, by the ſame reaſon, that they might make two awards, they might make twenty, which were very inconvenient.

But now on the other ſide, I conceive that an award made, be made at ſeveral times, or by parcels, ſo that it be not delivered under their hands according to the ſubmiſsion until the whole be made.

And certainly that which is principally required in every arbitrement is, that it be agreeable in ſubſtance and circumſtance to the ſubmiſsion; which it may wel be, though it be made at ſeveral times, or by parcels, ſo that it be made and delivered according to the ſubmiſsion, at the time appointed.

And I conceive all that is done by the arbitrators, is but as a comuning or diſcourſe concerning the matters in controverſie ſubmitted unto them, for that they may vary in their judgments as they ſhal ſee occaſion. for they have liberty to arbitrate according to their diſcretions, ſo they have an eye to the ſubmiſsion, I ſay, I conceive, all

as nothing until they have finished and delivered the arbitrement, which is the complement and perfection of it.

Besides, where the submission is of many things, and those of great difficulty, if the Law should be that the arbitrators might not make their arbitrement by parcels, it might be very mischievous to the parties, especially considering that submissions are most commonly so illiterate men.

Neither is my opinion groundless, or without authority; for by *Moile* in 39 H. 6. an arbitrement may wel be made in parcels, so that all be made before any day assigned.

39.H.6.9

I have now finished this poore endevor of mine of shewing you what arbitrements are good in Law, and what not. I shall only adde this one Rule, concerning the understanding or exposition of arbitrements, which will be very useful in that particular. and so conclude all; and that is.

That an award or an arbitrement shal be construed according to the intent or meaning of the arbitrators, and not according to the words only, as you shal finde by the Books quoted in the Margine.

21.E.4.32 a, 19.H.6, 36,37. Cook. lib. 10.f37.b.

FINIS.

THE SECOND PART OF Actions for Slanders:

With a second Part of Arbitrements, together with directions and presidents to them, very usefull to all men.

To which is added Libels, or a Caveat to all infamous Libellers, whom these distracted times have generated and multiplied to a common Pest, like the Frogs and Locusts of *Egypt*, even almost to the ruine and destruction of their Mother *England*.

Principi populi tui non maledices, &c.
Non facias calumniam proximo.

To which likewise is added what defamations are determinable in the Ecclesiasticall Courts, what not.

As also certaine Quæries or doubtfull Cases, collected by the same Author, out of our old and new Books, and put under their proper Heads or Titles, together with the Books cited *pro & contra*, very usefull and necessary for all Students in the Law

And to each particular Treatise severall and distinct Tables.

By *John March* of *Grayes Inne* Barrester.

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Actions for Slanders.

THE SECOND PART.

Which [illegible] in *Banco Regis*, adjudged, if a man call another perjured man, or a procurer of perjury, an Action upon the Case lyes: but if he saith, that he is a false forsworne man, or that he is a Vermine of the earth, a false Drone, an Hypocrite in the Church for such words no Action will lye.

Which [illegible] *Ed.* in *B. R.* resolved, that if a man bring an Action upon the Case upon divers words, of which some are not sufficient to maintaine

the Action, and upon [illegible] the [illegible] on well lyes, and the Jury [illegible] damages for all the words, this [illegible] good matter in Arrest of Judgment, for the Jury assesse damages as well for those words for which the Action doth not lye, as for those for which the Action lyes; but if they doe not assesse damages for the words which are not Actionable, [illegible] the Evidence this be mowne, that they doe not assesse damages for [illegible] words, there is otherwise.

Trin. 28. [illegible] in B. R. if a man say of another that he is a man-slayer, and hath laine in wait to kill, adjudged an Action upon the case lyes for these words.

Hill. [illegible] in Eli. in B. R. an Action upon the case was brought for these words, Thou art a cousen [illegible] Knave, for thou hast sold me a [illegible] phir for a Diamond, and [illegible] it doth lye because he was a [illegible] smith, and this is cause to [illegible] him in his living; and so one [illegible] another, who lives by buying [illegible] selling, though that he is not a [illegible]

chant,

...t, that he is a Bankrupt, a good ...tion upon the case will lye; but ... saith to a Taylor, that he ... cousening Knave, because that he ... to him a Chaine for Gold ... Copper, and that he is ... Knave upon Record and ... prosecuted for cousening, ... lye.

... in B. R. Sir Edward ... brought an Action upon ... against one for these words, ... Hastings hath procured ... Knave to seek my blood; ... that the Action would ... lye for those words, for that ... are too generall, and doe not ... him in speciall, for he may ... lawfully, for it is lawfull for ... to seeke his blood, if he were an ... in Felony, Murder, or Trea-... and he might procure one that ... perjured to give evidence of the ... such Fact, and peradventure ... no knowledge of the perjury; ... he had said, that he had pro-... one to be perjured, it had been ... And a case was cited, ad-

judged in the King's Bench, wh[illegible]
Mr. [illegible] brought an Action up[illegible]
the case against one who said, [illegible]
got his living by swearing and [illegible]
swearing; and adjudged that no [illegible]
ction will lye upon [illegible]
'twas also adjudged that no Action
will lye if one say of [illegible]
he hath made false Rec[illegible]
[illegible]es them; but 'twas adjudged that
an Action will well lye [illegible]
who saith of another, [illegible]
procured one to lye in wa[illegible]
der him.

Mich. 29. Eli. in B. R. a man said
of another, Thou art a [illegible]
thou hast cut off the Eare-mark of
my Sheep and set on thine owne, no
Action w[illegible] for these words.

H[illegible] in B. R. in an Action
upon the case [illegible] words, for that the
Defendant said to a Coroner, [illegible]
art a cousening Knave, [illegible]
[illegible] of his Land, [illegible]
that the Action would not lye [illegible]
any of these words [illegible]
but if he had touched [illegible]
ciall point of his office [illegible]

Act-

[illegible]tion would well have laine. And [illegible] that [illegible] adjudged, that if [illegible] man say to one, Thou hast robbed [illegible], and [illegible] taken away my Evi[illegible] that no Action will lye.

Mi[illegible] 43. *Eli.* in *B. Com.* an [illegible] upon the case was brought by [illegible] against the Portreiue of [illegible] in Kent for these words; Thou keepest a House of Bawdry, [illegible] the Jury gave foure pence da[illegible] the Justices would not [illegible] any Judgement entred for the [illegible], but bid her goe to the Bawdy Court, which understood [illegible]dry was, for they did not. [illegible] Reader you shall finde here im[illegible]atly after that it hath been of[illegible] adjudged in this case, that the Action would lye, where one sayes [illegible] Woman, that she keeps a Bawdy [illegible] and certainly there is no [illegible] where one sayes of a Wo[illegible], that she keeps a House of Baw[illegible], and where one [illegible] that she [illegible] a Bawdy-house: And the dif[illegible] you shall finde, between [illegible] of a woman that she is a Bawd,

Read against Saul

Sir Edw. Herberts Case;

[illegible] be that he might doe so and not [illegible] it. [illegible] Ch. Just. where the [illegible]rds have a double construction, [illegible] may as soon doe wrong as right, [illegible] therefore we ought to give no [illegible]gement [illegible] such a case unlesse we [illegible] doe [illegible] ignorantly, which is a [illegible] fault [illegible] a Judge; therefore let [illegible]gement be stayed untill the [illegible]ntiffe shew cause. *Willard* prayed [illegible]gement for the Plaintiffe the case [illegible] *Megge* against *Griffith* for these [illegible]. A woman told me she poyso- [illegible] her first husband, adjudged Actio- [illegible] *Cardinalls* case of Graies Inne; [illegible] had consented to *Cardinal*, *l.* 8. had [illegible] dispatched out of the way; [illegible] was much stood upon, and yet [illegible]ment was given for the Plain- [illegible] Another case was this, one [illegible]ught an Action for these words, [illegible] sought my innocent blood [illegible] beleeve was *Hertberties* case [illegible] cited *l.* 26. of the Queene ad- [illegible] that the words were Actiona- [illegible] and after Judgement was given [illegible] principall case for the Plain- [illegible] and 'tis said by the Reporter,

Megge against *Griffith*.

Cardinalls Case.

that the [illegible] being a hund[illegible]
pound, we[illegible] mitigated by [illegible] Jud[illegible]
to fifteen [illegible] and w[illegible] he [illegible]
ted, and we[illegible] [illegible] for [illegible]
Reader, though, I [illegible]
a good hand, yet [illegible]
by the other [illegible]
and so upon the [illegible]
Hertherties case before c[illegible]
not without ground [illegible]
case before cited (if I m[illegible] not
the same in effect with [illegible] and
judged point blanke co[illegible]
so *Hext* and *Yeomans* case, [illegible]
of the Queene in the Kings Be[illegible]
Coke, Lib. 4. for my ground [illegible]
seeks my life, adjudged not [illegible]
ble upon the reason given befo[illegible]

Hext and *Yeomans* Case.

Hill. 41. *Eli.* in *C. B.* an [illegible]
was brought by a Merchant fo[illegible]
words, Thou art a coulening Kn[illegible]
and a Banckrupt Knave. [illegible]
ba, aut alia ars familia sepius [illegible]
niel moved in Arrest of Judgm[illegible]
but by the Court the first [illegible]
were Actionables and such [illegible]
as are given are alwaies suppo[illegible]
be given for the materiall wor[illegible]
an[illegible]

[illegible] the [illegible] is voyd. But for [illegible] pare (Reader) I am somewhat [illegible] full, whether the words thus [illegible] be Actionable or not; for [illegible] doubt upon the last words, [illegible] *similia*) other words then [illegible] words layed in the Declaration [illegible] upon a not guilty pleaded) [illegible] in evidence, and the latter [illegible] makes the former words to be [illegible] for if a man shall bring [illegible] Action for words which are Acti- [illegible] for saying that he called [illegible] or, *verba iis similia*, cer- [illegible] no Action will lye for the in- [illegible]; but to this 'twill be said, [illegible] true in the latter case, but in [illegible] Barre the former words [illegible] alleadged before in the [illegible] and the latter words are [illegible] words of repetition,

[illegible] *Eli.* in *C. B.* an Action up- [illegible] case was brought by *Huntson* [illegible] the Bishop of *Ely*, for pub- [illegible] that he was his Villaine; the [illegible] justified the speaking of the [illegible] afterwards the Bishopricke came to the Kings hands for con- tempt,

Huntson against the Bishop of *Ely*.

tempt, [illegible] I finde no further pro-
ceeding in the case. Heretofore t[illegible]
cleare that no Action would ha[illegible]
laine [illegible] such a case, and the reas[illegible]
is evident, because that he pretend[illegible]
title to him as his villaine. An[illegible]
agreeing with this are the Books [illegible]
ted before, but a *Jurors*, I conceiv[illegible]
at this day no Action will lye, be-
cause Villinage at this day is ob[illegible]
lete and out of use, and therefore c[illegible]
be neither prejudice nor scandall [illegible]
a man.

Sherrington against Ware.

Mich. 41. & 42. *Eli.* C. [illegible] It w[illegible]
holden by the opinion of the who[illegible]
Court (*Anderson* absent) and so [illegible]
judged, that an Action upon [illegible]
will not lye against an Indi[illegible]
lony, albeit the Felon be found [illegible]
guilty; for *Glanvill* then said, t[illegible]
would breed a great mischiefe in [illegible]
Common-Wealth, if it should [illegible]
suffered, and many an honest [illegible]
should be punished, when a Thi[illegible]
should escape hanging by the favo[illegible]
of the Jurors. Upon this differen[illegible]
this Iudgement (as you shall fin[illegible]
afterwards) is Law, where the prose-
cution

[illegible] wa[illegible] malice, where not; [illegible]ough [illegible] prosecution be law- [illegible] of malice, and not [illegible] as [illegible] *causa* for it, if [illegible] be [illegible]itted an Action [illegible] nature of a conspi- [illegible] as a Thiefe may [illegible] of the Ju- [illegible] man may be very [illegible] in his reputation [illegible] malicious prosecution; and [illegible] the common experience at [illegible]

[illegible] *Eli. C. B. Williams* [illegible] in Arrest of Judgement for [illegible] words; Thou art a forsworne [illegible] thou wert forsworne at *Ilcon* [illegible] (*[illegible]endo*) the Court Leet [illegible] holden; and he moved that the [illegible] by his (*[illegible]nuendo*) should [illegible] expounder of the Defendants [illegible] neither that it should [illegible] the words further then they [illegible] spoken, which the Court a- [illegible] and then he said the words [illegible] beare no Action, *Walmesly* Just. [illegible] perjured man will beare [illegible] Action, *[illegible]* of forsworne, unlesse he

he n[illegible] *estr*[illegible] or
such [illegible] here [illegible] into
by [illegible], tha[illegible]
in [illegible]
this [illegible] *ch*[illegible]
a forswo[illegible] na[illegible]
sworne in [illegible]
the *Kings* [illegible]
Actionable [illegible]
this case, and all [illegible]
that truly 'twas [illegible]
If one call my Co[illegible]
swor[illegible] man, for he [illegible]
or [illegible], I thinke [illegible]
Action, [illegible] the *inn*[illegible]
for [illegible] traversable. [illegible]
One of you forged a *Subp*[illegible]
the Chancery ([illegible]*endo*[illegible]
[illegible] was st[illegible]
becau[illegible] wh[illegible] grieved ou[illegible]
be [illegible] *Williams*
art, [illegible]
[illegible]
beca[illegible] may be inten[illegible] to
Co[illegible]ison; but after [illegible]
ment w[illegible] in the prin[illegible]
for the Pla[illegible] agreei[illegible]
cases which I have [illegible]

Mowle a-
gainſt *Ske-*
lington.

reaſon

Coke, lib. 4

be lawfull I know no reason

[illegible] was [illegible] cu- [illegible] alling of a woman [illegible] which a *Mulieres Corpus* [illegible] ght [illegible] and hoe- [illegible] a *Praecedendo* [illegible] and twas [illegible] who was for [illegible] by *Mulier* [illegible] Ch. [illegible] that of [illegible] time there had bin many *Pyrenees* [illegible] in this Court.

[illegible]

[illegible] I have here added to *Alti-* [illegible] *Slander* [illegible] certain [illegible] which [illegible] adjudged touching Libells [illegible] ours, [illegible] to the [illegible] purpose, [illegible] as worthy the [illegible] as the [illegible] especially in [illegible] times of division and [illegible] in which so many base and sour- [illegible] Libells are vented, even against [illegible] and Authority, a thing de- [illegible] to all good and peaceable [illegible] and utterly against the Word [illegible] as I shall make appeare here- [illegible] That I may therefore deterre men

Coke. lib. 5
fol. 125

and ſcandalized; in which caſe theſe points were reſolved.

Firſt, that every Libell (which is called, *Famoſus Libellus ſeu infamatoria Scriptura*) is made either againſt a private man, or againſt a Magiſtrate, or publique perſon; if it be made againſt a private perſon it deſerves a ſevere puniſhment, for though that the Libell be made againſt one only, yet this incites all thoſe of the ſame family, kindred, or ſociety, to revenge, and ſo tends by conſequence to quarrels, and breach of the Peace, and may be the cauſe of the effuſion of blood, and of great inconvenience. If it be againſt a Magiſtrate, or other publique perſon, this is a greater offence, for this concernes not onely the breach of the Peace, but the ſcandall of Government; for what greater ſcandall of Government can there be then to have corrupt or wicked Magiſtrates to be appointed, and conſtituted by the King to governe his Subjects under him? and a greater imputation to the State cannot be then to permit ſuch corrupt

men to sit in the sacred Seat of Justice, or to have any medling in or concerning the administration of Justice.

Secondly, it was resolved, that though that the private man or Magistrate be dead at the time of the making of the Libell, yet this is punishable; for in the one case this incites others of the same family, blood, or society to revenge, and to breake the Peace; and in the other the Libeller traduces and slanders the State and Government, which doth not dye.

Thirdly, it was resolved that a Libeller (who is called, *Famosus defamator*) shall be punished either by Indictment at Common Law, or by Bill if he denyes it; or *Ore tenus* upon his owne confession in the Starre Chamber, and according to the quality of his offence he may be punished by Fine, or Imprisonment, and if the case be exorbitant, by Pillory, and losse of his eares.

Here by the way I would have every one take notice, that though the

Starre

Starre Chamber be taken away, yet that this vilde and deteſtable offence is not left diſpuniſhable; And I would likewiſe have all men obſerve (eſpecially in theſe times, in which Libells and Libellers ſo much abound, to the great diſhonour of our Nation, and to the diſturbance of our peace and government) what a great and defamatory puniſhment anſwerable to the offence the Law inflicts upon ſuch offenders: but I ſhall returne againe to the caſe.

Fourthly and laſtly, it was reſolved, that it matters not if the Libell be true, or if the party againſt whom it is made be of good fame, or of an ill fame; for in a ſetled ſtate of Government the party grieved ought to complaine for every injury done unto him in ordinary courſe of Law, and not by any means to reveng himſelfe, either by the odious courſe of Libelling, or otherwiſe.

And to aggravate the offence, it is ſaid as followeth in this caſe; That he that killeth any man with the ſword in combate is a great offender,

but a greater offender is he that poysoneth another; for in the one case, he that is openly assaulted may defend himselfe, and knowes his Adversary, and may endeavour to prevent it; but poysoning may be done so secretly that no man can defend himselfe againſt it, for which cause the offence is the more dangerous, for that the offender cannot easily be knowne. And of such nature is Libelling, it is secret, and despoyles a man of his fame (which ought to be more precious to him then his life) and *difficillimum est inventre Authorem infamatoriæ Scripturæ*, and therefore when the offender is knowne he ought to be severely punished.

Further, in this case you have set forth the difference of Libells, and how many severall waies they may be punished.

Every infamous Libell, *aut est in scriptis, aut sine scriptis*. A scandalous Libell *in scriptis* is, when an Epigram, Rime, or other writing is composed or published to the note or contumely of another, by which his fame or dignity

dignity may be prejudiced; and such Libell may be publiſhed, 1. *Verbis aut cantilenis*, as where this is malitiouſly repeated, or ſung in the preſence of others. 2. *Traditione*, when the Libell, or any Copy of it is delivered over to ſcandalize the party. *Famoſus Libellus ſine ſcriptis* may be; Firſt, *Picturis*, as to paint the party in any ſhamefull and ignominious manner. 2. *Signis*, as to fixe Gallowes, or other reproachfull and ignominious ſignes at the Houſe of the party, or otherwiſe.

And it was reſolved, Mich. 43. & 44. of the Queene in the Searre Chamber in *Hallywoods* caſe; That if any one finde a Libell (and would preſerve himſelfe out of danger) if it be compoſed againſt a private man, the finder either may burne it, or preſently deliver it to a Magiſtrate; but if it concerne a Magiſtrate, or other publique perſon, the finder ought preſently to deliver it to a Magiſtrate, to the intent that by examination and induſtry the Author may be found and puniſhed.

Now I ſhall make it evident to you that Libelling and Callumniation is an offence againſt the Law of God, for *Leviticus* 17. *Non facies calumniam proximo*, Exodus 22. Verſe 28. *Principi populi tui non maledices*, Eccleſiaſtes 10. Verſe 20. *In cogitatione tua ne detrabas Regi, nec in ſecreto cubiculi tui diuiti maledices, &c.* Pſal. 68. 13. *Adverſus me loquebantur qui ſedebant in porta, & in me pſallebant qui bibebant vinum.* Job 30. Verſe 7, & 8. *Filii ſtultorum & ignobilium, & in terra penitus non parentes, nunc in eorum canticum verſus ſum & factus ſum eis in proverbium.* And it was obſerved that *Job*, who was the mirrour of patience, as it doth appeare by his intemperate words, became in a manner impatient, when Libells were made of him; and therefore it doth appeare how forcible this is to provoke impatience and contention.

And now Reader there are certaine Notes (as is obſerved in the cloſe of this caſe) by which a Libeller may be knowne; *Quia tria ſequuntur defamatorum famoſum*: 1. *Pravitatis incremen-*

tum,

rum, increaſe of lewdneſſe; 2. *Burſæ decrementum*, evacuation of the Purſe; and beggery: 3. And laſtly, *Conſcientiæ detrimentum*, ſhipwrack of Conſcience. Thus I have given you the caſe at large, full of excellent learning and directions, and well worth the knowing to the people of this age.

John Lambs Caſe.

John Lambe, Proctor of the Eccleſiaſticall Court, exhibited a Bill in the Starre Chamber againſt one *William Marthe*, *Robert Harriſon*, and many others of the Towne of Northampton, and againſt *Shuckburghe* and others for the publication of two Libells, and in this caſe it was reſolved: That every one that ſhould be convicted in the ſaid caſe, either ought to be a contriver of the Libell, or a procurer of the contriving of it, or a malicious publiſher of it, knowing it to be a Libell; for if one reads a Libell, this is not any publication

Mich. 8. *Ja.* in *Cam. Stellat.*

of it; or if he heare it read, this is not any publication of it, for before that he reads, or heares it, he cannot know it to be a Libell; or if he doth heare it, or read it, and laughes at it, this is no publication; but if after that he hath read or heard it he repeates it, or any part of it in the hearing of others; or after that he knowes it to be a Libell he reads this to others, this is an unlawfull publication of it; or if he doth write a Copy of it, and doth not publish it to others, this is no publication of the Libell, for every one that shall be convicted ought to be a contriver, procurer, or publisher of it, knowing it to be a Libell. But it is a great evidence that he publishes it, when he knowing it to be a Libell writes a Copy of it, except that afterwards he can prove, that he delivered it to a Magistrate to examine it, for then the act subsequent explaines his intention precedent.

See Reader, *Bracton, Lib. 3. tract de corona, cap. 36. fol. 155. Fiat non solum injuria, cum quis pugno percussus fuerit, verbe-*

verberatus, vulneratus, seu fustibus cæsus; verum etiam cum ei convitium dictum fuerit, vel de eo factum carmen famosum.

Here Reader, as in the case before, you are taught what shall be a publishing of a Libell, and what not; and hence you are instructed how to demeane your selfe in case a Libell should come to your hands, of which you were neither the contriver, nor the procurer, of which you ought to take speciall heed, for that not only contrivers and procurers of Libells, but also publishers of the same, they knowing of them to be Libells are punishable as aforesaid.

Barrow against Lewellin.

Paul Barrow preferred a Bill in the Starre Chamber against *Maurice Lewellin*, for writing unto him a spightfull and reproachfull Letter, which being brought, it appeared to the Court that it was sealed and delivered to his owne hands, and never otherwise published; and it was resolved, *Hob. Rep. pa. 86. pl. 63.*

solved, though the Plaintiffe in this case could not have an Action upon the case because it was not published, and therefore that it could not be to his defamation, without his owne fault of divulging of it; and all Actions of that kinde doe suppose, that in *multis quam plurimum propalavit, &c.* yet that the Starre Chamber for the King did take knowledge of such cases, and punish them; the reason is, for that such quarrellous Letters tend to the breach of the Peace, and to stirring up of challenges and quarrels, and therefore the meanes of such evill, as well as the end are to be prevented.

Sir *Baptist Hicks* case; Pasch. 16. *Ja.* in *Cam. Stellat.* rule accord.

I conceive Reader, that a man in the case aforesaid cannot be Indicted at the Common Law, because there is no publishing of it to the defamation and scandall of the party, and that which may be the occasion of quarrels is not a sufficient ground for an Indictment, without an actuall breach of the Peace, no more then a man could be Indicted for sending a challenge to another,

which

which yet was frequently punished in the Starre Chamber at the Suit of the King

Reader, it is worthy of thy serious consideration that it is in the first case resolved, that it matters not whether the Libell be true, or whether the party against whom it is made be of good fame, or of ill fame; and the reason is, because that a Libell cannot be justified. And accordingly was the opinion of my Lord *Hubbart*, in *Lake* and *Hattons* case, where he saith expresly, that a Libell, though the contents be true, is not to be justified, but to discover it legally to some Magistrate or other that may have Cognisance of the cause is the right way, but saith he, it may be justified in an Action upon the case, and thus much for Libels.

Hobb. Rep. p. 353. Sect. 334.

Defamations determinable in the Ecclesiasticall Court.

THis being a learning dependent upon the former, and indeed the same,

ſame, only varying in the Juriſdiction, I thought good to give you a touch of it, in which I ſhall cite you only a caſe or two which have been adjudged, which will be as a rule to all other caſes of this nature.

Coke, lib. 4 fol. 20. A. B.

Trin. 25. of the Queene in the Kings Bench between *Palmer* and *Thorpe*, it was reſolved, that defamations determinable in the Eccleſiaſticall Court, ought to have theſe three incidents. 1. That it concerne matter meerly ſpirituall, and determinable in the Eccleſiaſticall Court, as for calling a man Heretick, Schiſmatick, Adulterer. Fornicator, &c. 2. It ought to concerne a matter meerly ſpirituall only, for if ſuch defamation touch or corcerne any thing determinable at Common Law, the Eccleſiaſticall Judge ſhall not have Couſance of it. 3. Though that ſuch defamation be meerly ſpirituall, and only ſpirituall, yet he which is defamed cannot ſue there for amends or damages, but the Suit ought to be only for puniſhment of the fault, *pro ſalute animæ*.

And

And as to the first and second ground, the case in 22. *E.* 4. was cited to this effect; the Abbot of St. *Albans* sent his servant to a Feme Covert to come to his Master, and to speake with him; the servant performed his command, and upon this the woman came along with him to the Abbot, and when the Abbot and the woman were together, the servant (who knew the will of his Master) withdrew himselfe from them, and permitted them two to be alone in the Chamber, and then the Abbot said to the woman, That her array was grosse array; to which the woman said, That her array was according to her quality, and according to the ability of her Husband: and the Abbot (knowing in what women repose their delight) said to to her; That if she would be ruled by him, that she should have as good array as any woman in the Parish, and sollicited her chastity; when the woman would not consent to him, the Abbot assaulted her, and would have made her nought against her

22 *E.* 4. fol. 20.

her will, the which the woman would not ſuffer; upon which the Abbot detained her in his Chamber againſt her will, and to the intent &c. the Husband having notice of this abuſe to his Wife ſpake of all this matter and ſaid; That he would have his Action of falſe impriſonment againſt the Abbot for that he had impriſoned his Wife: upon which the Abbot (adding one fault to another) ſued the innocent and poore man for defamation in Court Chriſtian, for that the Husband had publiſhed, that the Abbot had ſollicited the chaſtity of his Wife, and would have made her nought.

But upon all this matter diſcloſed to the Court the Husband had a *Prohibition*, becauſe that the Husband might have had an Action at the Common Law, for the aſſault and impriſonment of his Wife, though that then he had not any Action, nor peradventure ever would; yet becauſe that the ſcandall determinable in the Eccleſiaſticall Court was upon all the matter diſcloſed, and mixt

with

with matter determinable at Common Law, for this cause upon motion made by the counsell of the Abbot to have a consultation in this case it was denied by the Court.

See 18 *E.* 4. 6. 12 *H.* 7 28. *Regis*, ver. 46, 47. & 54.

As to the third ground before laid downe, see the Statute *De Articulis Cler. cap.* 1, 2, 3. and the Statute *De circumspecte agatis, Anno* 13. *E.* 1. and *F. N. B.* 51. *I. K.* 52. *D. M.* 53. *A. F.* it appeares there, that if a Parson sue in Court Christian for laying violent hands upon him, and to have the party Excommunicated, or a corporall punishment, and not for damages or amends that in such case the Ecclesiasticall Court hath jurisdiction, but the Plaintiffe may recover Costs there; and if the Defendant in case of defamation be put to a corporall punishment, either for laying violent hands upon Clerkes, or the like; if the party will redeeme his Pennance, and agree to pay to the party damnified a certaine summe of money, there the party damnified shall have his Suit for it in the Court Christian and no Prohibition lyes.

Accor-

22 E. 4. tit. Consultation. 5. Corbets case. Coke, lib. 7 fo. 44. A. Kemes case

According to the resolution afore said, it is resolved in 22. E. 4. *Corbets* case, that when the Spirituall Court shall have jurisdiction, it behooves that all the cause be Spirituall; as if a Parson Libell against a Lay-man for Tithes imported, the Temporall Court shall have jurisdiction, for this is mixt with the temporalty, and thus much in short for defamations in the Ecclesiasticall Court.

Pasch. 3. Eli. in C. B. Rot. 527. Cocks against Mattelfelde.

London: ss. *Will. Mattelfeld nuper de Merye in Com. Staff. generosus alias dict. Will. Mattellfeld de Merye in Com. Staff. Gent. Sum fuit ad respondend. Thom. Cocks, alias dict. Thom. Cocks & Joh. Cocks, de placito quod reddat eis quadragint. librat, quas eis debet & iniuste detinet. Et unde idem Thom. & Joh. per Robertum Ebell Attorn. suum dic. quod cum predict. Will. vicesimo tertio die Aprilis, Anno Regni Domina Regni nunc primæ, apud Lond. in Parochia beatæ Mariæ, de Arcub. in*

Ward

Warde de Cheape, per quoddam scriptum suum obligatorium concessisset se teneri eidem Thom. & Joh. in predict. quadragint. libris, solvend. eisdem Thom. & Joh. cum inde requisit. fuisset, predict. tamen. Will. liet sepius requisit. predict. quadragint. libras eisdem Thom. & Joh. nondum reddidit, sed ill. eis reddere contradixit, & adhuc contradicit, unde dic. quod deteriorat, sunt & dampn. habent ad valenc. decem librarum, & inde produc sectam. &c. Et proferunt hic in Cur. scriptum predict. quod debit. predict. in forma predict. testat. cujus dat. est die & Ann. supradict. &c.

Et predict. Will. per Edwardum Colburne Attorn. sun. ven. Et defend. vim & injuriam quando, &c. Et pet. auditum script. predict. & ei legitur in hæc verba. The condition of this Obligation is such, that if the above bound *William Mattelfeld*, and *Thomas Wright*, together with one *Mattelfeld* father of the said *William*, and one *Thomas Brindley*, and every of them, their Heires, Executors, Administrators, and Assignes, and every of them of their parts and parties doe well and truly

obſerve, performe, fulfill, and keepe the award, arbitriment, order, rule, and judgement of *Andrew Bowyer* Gent. and *Robert Ethell* Arbitrators, indifferently elected and choſen by the ſaid *William Mattelfeld*, and *Thomas Wright* on the one party, and *Thomas Cox*, and *John Cox* of the other party, to arbitrate, doome, judge, and award between the ſaid parties, and upon all manner of matters, ſuits, quarrels, debts, and demands, had, moved, or depending betwixt the ſaid parties, or betwixt any of them, or any of their ſervants or children, either in their owne right, or to the uſe or behalfe of any other perſon or perſons from the beginning of the world unto the day of the making hereof; and eſpecially for the determination of the right, intereſt, term, and title, of and in the moyety of certaine Lands, Meſſuages, and Tenements, lying and being within the Lordſhip of *Mery*. in the County of Staff. now in the tenure and occupation of the aboveſaid *Thomas Cox*; as alſo for and concerning the parti-

tion

tion of all such Lands, Messuages, Tenements, and Hereditaments which descended and came by right of inheritance to one *Joane Dart*, wife of *Jo. Darte*, and *Margeret Cox*, wife of the said *Thomas Cox*, daughters and Co-heires of *Margeret Cox*, and Sisters and Co-heires of *Jo. Cox* deceased; so that the said award be made and given up in writing unto the said parties, or to one of them by the said Arbitrators, before the Feast of St. *John Baptist* next ensuing this present date, that then this present Obligation be voyd, or else, &c. *Quibus lectis & audit. idem Will. dic. quod predict. Thomas & Joh. actionem suam predict. versus eum here. non debent, quia protestando dic. quod predict. Arbitrator. post confectionem scripti predict. & ante predict. Festum Sci. Joh. Baptisti, in conditione predict. superius specificat. nullum arbitrium, estimationem, sive judicium, in premissis fec. pro plito; dic. quod Arbitratores predict. non deliberaverunt in script. inter ipsos Will. Mattelsfeld, Thom. Wright, Radum Mattelsfeld, Thom. Brindley, & predict. Thom. Cox, & Joh. Cox, aliquod*

arbitrium, ordinacionem, sive judicium, prefat. Will. Mattelfeld, Thom. Wright, Radum Mattelfeld, & Thom. Brindley, sive eorum alicui, de & super premissis, in conditione predict. specificat, secundum formam & effectum conditionis illius, & hoc parat. est verificare, unde pet. indicium si predict. Thom. & Joh. actionem suam predict. versus eum herem debeant, &c.

And upon this Plea the said Plaintiffes demurred in Law, to which the Defendant joyned, and this was adjudged no Plea, because the Defendant pleads, *Quod non deliberaverunt in scriptis*; and the condition is given up in writing, and therefore the Plea should be, *Quod non reddiderunt in scriptis.*

Mich. 27. *H.* 8 a man was bound in an Obligation to another to stand to the arbitrement of certaine persons, and the Arbitrators award that the Obligee shall make a Lease for terme of yeares to the Obligor, rendering a certaine Rent to the Obligee, &c. and the Obligee made the Lease according, and after the Obligor did not pay the Rent reserved

upon

upon this Leaſe to the Obligee, yet the Obligee, who was the Leſſor, cannot bring an Action of Debt upon the ſame Obligation againſt the Obligor, becauſe he doth not pay the Rent, and this by the opinion of *Shelly* and *Ingleyeld* Juſtices clearly, becauſe theſe words in the ſaid award, *viz.* rendring a certaine Rent, are not parcell of the ſubſtance of the ſaid award, but the making of the ſaid Leaſe is the effect of the ſaid award; and the Leſſor hath other remedy for the ſaid Rent, as to diſtraine. But if the Arbitrators had awarded that the Obligee ſhould make a Leaſe to the Obligor, and that for this Leaſe the Obligor ſhould pay to him a certaine ſumme of money, that if the Obligor doth not pay the ſaid ſumme then the Obligee ſhall take advantage of this Obligation.

Paſch. 28. *H.* 8 *A.* and *B.* were bound in in an Obligation joyntly and ſeverally in 10. *l.* to one *C.* to ſtand to the arbitrement of certaine perſons, of all treſpaſſes, debates, &c.

and the Arbitrators award, that the ſaid *A.* ſhould pay to the ſaid Obligee, 10 s. and that the ſaid *B.* ſhould pay to the ſaid Obligee 3. s. 4. d. and in debt brought againſt the ſaid *B.* upon this Obligation the ſaid *B.* pleaded generally, that he had performed the ſaid arbitrement; and *Mountague* and *Ingleſfeld* Juſtices ſaid, that this was no good plea; but that the ſaid Defendant ought to have pleaded ſpecially how he had performed the award; and he ought alſo to have ſhewne how that the ſaid *A.* had performed the award, becauſe the ſaid *B.* is bound for the ſaid *A.* and every of them for the other.

Mich. 34 *H.* 8. in an arbitrement where the ſubmiſsion is *de jure titul. & poſſeſſione*, of certaine Lands betwixt the parties, the Arbitrators cannot award, that the Obligor ſhall cauſe the Lord of the Mannour of whom the ſaid Land is holden, to let to the Obligee the ſame Land by Copy, &c. or that he ſhall make a Stranger to make a releaſe to the ſaid Obligee of all his right in the ſame Lands, and

this

this by *Baldwin* chiefe Iust. of the Common Bancke, see the like *Anno* 28. *H.* 6. *fol. ultimo.*

Now (Reader) the reason of this case is evident, because 'tis an award of a thing to be done by a Stranger, to inforce the doing of which lyes not in the power of the party, and therefore voyd; as you shall finde the Law to be in my first tract of Arbitrements, pag. 214, 215, 216, 217.

Termino Sci. Mich. Anno 3. & 4 *Eliz.* Reginæ, Rot. 1324.

ANdreas Meverell nuper de Applebee in Com. Leicest. generosus fuit ad respondend. Ioh Browne, de placito quod reddat ei 20. l. quas ei debet & injuste detinet, &c. Et unde idem Ioh. per Will. Perrison Attornatum suum dic. quod cum predictus Andreas quinto decimo die Septembris, Anno Regni Dominæ Reginæ nunc primo apud Lon-

don, in Paroch. beat. Marie de Arcubus in Warda de Cheap per quoddam script. suum obligatorium concessisset se teneri eidem Ioh. in predict. triginta libris solvend. eidem Ioh. cum inde requisit fuisset predictus tamen. Andreas licet sepius requisitus predictas triginta libras eidem Ioh. nondum reddidit sed ill. ei hucusque reddere contradixit, & adhuc contradicti. unde dic. quod deteriorat. est & dampnum het. ad valenc. decem. librarum & inde producit sectam. &c. Et profert hic in Curia scriptum predictum quod debitum predictum in forma predicta Testatur Cujus dat. est die & Anno supra dict. &c.

Et predictus Andreas per Leonardum Stephenson Attornatum suum venit & defend. vim & injuriam quando, &c. Et petit Auditum script. pred. & ei ligitur, &c. Pet. etiam Auditum conditionis ejusdem script. & ei legitur in hec verba. The condition of this Obligation is such, that

that if the above bounden *Andrew*, his Executors, or Administrators, doe ſtand to abide, performe, fulfill, and keepe the Award, Arbitrement, Ordinance, and Judgement of *Michael Purifie* Eſq; Arbitrator, indifferently elected, named, and appointed and choſen by the aforeſaid parties to Arbitrate and Ordaine, Doome and Judge of, for, in, and upon the delapidations of the Parſonage of *Stretton* in the County of *Derby*, with the appurtenances being, and remaining in ruine and decay, by the fault, and after the death of *Robert Yeoman-ſon* Clerke, late Parſon there; and alſo in and upon all and ſingular Actions, Suits, Quarrels, Debts, Debates, Treſpaſſes, and Striſes had, moved, ſtirred, or now depending in varience betwixt the ſaid parties from the beginning of the world untill the day of the date hereof, ſo that the ſame Award be made,

made, ſealed, and delivered in writing unto either of the ſaid parties under the Seale of the aforeſaid Arbitrator, at or before the firſt day of October next comming after the date hereof, that then this Obligation to be voyd, or elſe to ſtand, and be in full ſtrength and vertue. *Quibus lect. & audit. idem Andreas dic. quod predictus Joh. Acconem ſuam predict. verſus eum habere non debet quia proteſtanda quod predictus Arbitrator poſt confectionem ſcripti pred. & ante predictum primum diem Octobris in conditione predict. ſpecificat non fecit aliquod Arbitrium ordinationem neque judicium inter partes predictas de & ſuper premiſſis in eadem conditione ſuperius ſpecificat. pro placito dic. quod predictus Arbitrator poſt confectionem ſcripti predicti & ante predictum primum diem Octobris non fecit & deliberavit in ſcriptis ſub ſigillo ſuo aliquod Arbitrium*

bitrium ordinationem neque judicium inter ipsum Andream, & prefat. Ioh. de & super premissis in conditione predicta superius specificat; Et hoc paratus est verificare unde pet. judicium si predictus Ioh. Ac conem suam pred. versus eum habere debeat, &c.

Et predictus Ioh. dicit quod ipse per aliqua preallegat. ab Ac cone sua predicta hend. precludi non debet quia dic. quod post confectionem scripti predict. & ante predictum primum diem Octobris in conditione predicta superiis specificat (viz.) vicesimo tertio die Septembris, Anno primo supradict. apud London, in Paroch. & Warda predict. predictus Arbitrator accep. super se onus Arbitrarii ordinationis & judicii predict. de & pro delapidationibus & aliis de casubus predict. Rectorie Horeorum, & aliorum edificiorum ordinavit & Arbitratus fuit inter ipsum Ioh. & pred.

Andream

Andream de & supra premissis in conditione predicta superius specificat. modo & forma sequent, (viz.) quod predictus Andreas Meverell ante festum Sci. Joh. Baptistæ tunc proximi sequent. reperaret & & emandaret cum acercubus clavis tegulis & calce ubi necesse requiret domum mansionalem predict. Rectorie & omnium aliarum domorum tegulat. ejusdem Rectorie sufficient. ad custag. & onere predict. Arbitratoris & cujusdam Ric. Browne, & etiam quod predictus Andreas inven. & imponer. unam notam soleam vocat. a Groundsill ex illo latere versus campum vocat, le Backside domus Mansional. immittend. vel imponend. antes vocat. Studdies & faceret parietes concraticas oblunaret & substraret voc. groundsilled latus illum per totum ad tunc in decasu existent. & etiam cooperire eandem cum tegulis & calice sufficient. ac quod

pre-

predictus Andreas reparare faceret in iit & maeremium in longo horreo in omnibus locis inde ubi maeremium ad tunc fract. vel in decasu & etiam causaret horreum illud sufficient. esse tectum vocat. Thacked ubi necesse requiret ratione impositionis pred. maeremij & in omnibus alij locis quam talibus quales essent fract. pervent. tantum post mortem predicti nuper Rectoris & quod predictus Andreas haret framina ad emendend. omnes predictos locos sic. fract. Et predictus Andreas emendaret & repararet omnes mures predict. Rectorie qui fuerunt jndecasu in vita predict. Rectoris ante tunc in decasu & ruina prout sufficient cogitat. esse per predict. Arbitratorem & predictum Ric. Browne, & pro omnibus aliis decasibus Ianuar. osi osiorarum palorum & murorum fact. & act. post mortem predict. nuper Rectoris quod predict. Andreas

Meverell,

Meverell, esset inde exoneratus per predictum Arbitrium & quod predictus Iob. Brown, exoneraret & indempn. conservaret predictum Andream versus, Will. Mote ad tunc Rect. Rectoriæ de ulterioribus demand. pro dilapidationibus quam ille que ante & supra fur. appunctuat & assignat dict. Andree ad faciend. & agend. & insuper predictus Arbitrator declaravit per Arbitrium suum predictum quod predictum Arbitrium suum non extenderet alicui aliæ materiæ vel demand. quam super fuit mentionat & declarat totum pro & concernen eadem dilapidationes vel decasus pro ut per Arbitrium predictum plenius apparet quod quidem Arbitrium predictus Arbitrator post confectionem scripti prædicti & ante predictum primum diem Octobris (viz.) prædicto vicesimo tertio die Septembris, Anno primo supradict. apud London, in Paroch. & warda

pre-

predict. tam præfat. Andree quam eidem Joh. in Scriptis indentat. ſigillo ipſius Arbitratoris reddidit & deliberavit. Et idem Joh. dicit quod licet ipſe performavit Arbitrium ordinationem & judicium predict. in omnibus ex ejus parte performand. ſecund. formam & effect. Arbitrii illius proteſtand. quod predictus Andreas poſt confectionem Arbitrii prædict. & ante Feſtum Nativitat. Sci. Joh. Baptiſti tunc prox. ſequent. non reparavit & emandavit cum aſſeculis clavis tegulis & calce predictum domum manſional prædict. Rectorie ubi neceſſe requiret ſecund. formam. & effectum Arbitrii præd. Et hoc parat eſt verificare unde pet. judicium & debitum ſuum predictum una cum dampnis ſuis ratione detentionis debi illius ſibi adjudicari, &c.

Et predictus Andreas ut prius dic. quod predictus Arbitrator poſt confectionem ſcripti prædicti & ante predictum

dictum primum diem Octobris, tunc prox. sequent non fecit & deliberavit in script. sub sigillo suo aliquod Arbitrium ordinationem neque judicium int. ipsum Andream & prefat. Joh. de & super premissis in conditione predicta superius specificat pro ut ipse superius allegavit & de hoc ponit se super patriam & predictus Joh. siliter ideo preceptum est, vic. quod venire fac. hic a die sci. Mich. in unum mensem 12, per quos, &c. Et qui non, &c. ad recognitionem, &c. qui tam, &c. retourn. Octab. Hillarii.

Postea die & loco infra content. coram Jacobo Dyer Mil Capital. Justic. Domine Regine de banco assoeiat, sibi Joh. Farewell per formam Statuti &c. ven. tam infra nominat. Joh. Browne, quam infra scrip. Andreas Meverell per Attorn. suos infra content. Et jure jur. unde scil infra sit mencio exacti similiter ven qui ad veritatem de infra content. dicend

electi triat & jurat dic. super sacrum. sum quod infra nominat. Michael Purfey post confectionem script. infra specificat & ante infra script. primum diem Octob. viz. vicesima tertio die Septembris, anno Regni Domine, Eliz. Regine nunc primo fecit & inscript, sigillo suo delibavit quoddam Arbitrium inter prefatum, Iob. Browne armig. in nomine & pro parte cujusdam Will. Mote, ad tunc Rectoris de Stretton infra nominat, ex una parte & prefat Andream Meverell gener. executorem infra content. Roberti Tomanson, Clicim nuper Rector de Stretton predict. de & pro delapidationibus & aliis decisis ejusdem Rectorie Horreorum & aliorum edificiorum ibid. tenor cujusquidem in hec verba. The Award and Order made at *Stretton in le Feild* by me *Michaell Purefye* Arbitrator, indifferently elect and chosen betwixt *John Browne* Esq; in the name and for the behalfe of

one *William Mote* now Parson of *Stretton* aforesaid of the one party, and *Andrew Meverell* Gent. Executor of one *Robert Yeomanson* Clerke, late Parson of *Stretton* aforesaid, of and for the delapidations and other decay of the same Parsonage, Barnes, and other buildings there the 23. day of September, in the first yeare of our Soveraigne Lady Queene *Elizabeth*; first I the said *Michaell* order and award, &c. *Vt supra sed utrum Arbitrium predictum per prefat. Mich. Purfey inter eosdem Ioh. Browne, in nomine & pro parte predict. Will. Mote & Andream Meverell, modo & forma predict. factum & delibat. sit aut in lege adjudicari debeat aliquod Arbitrium ordinationem sive judicium inter prefat. Ioh. & Andream de & super premissis fact. & in scripto sub sigillo suo delibat. nec ne eidem jur. petunt. advisament*, Cur. &c. Et si sup[illegible] mat[illegible]

materiam predict. videbitur eidem Cur. quod Arbitrium predict. per prefat. Mich. in forma predicta factum & delibat. sit aut in lege adjudicari debent Arbitrium ordinationem sive judicium inter prefat. Ioh. & Andream de & super premissis factum & in script. sub sigillo suo delibat. tunc iidem jur. dicunt super sacrum suum quod predictus Arbitrator, post confectionem scripti infra content. & ante infra content. primum diem Octob' is, fecit & delibavit in script. sub sigillo suo predictum Arbitrium ordinationem & judicium inter ipsum Andream & prefat. Ioh. de & super premissis in conditione infra script. interius specificat pro ut predictus Ioh. Browne interius allegavit, & assid. dampna ipsius Ioh. Browne, &c. ultra, &c. ad 3. s. 4. d. Et pro missis custagiis illis, ad 53. s. 2. d. &c. Et super totam materiam predi- videbitur, eidem Cur. quod Ar-

bitrium predictum per prefat. Michem in forma predicta fact. & delibat. non sit necin lege adjudicari debeat Arbitrium ordinationem neque judicium inter prefatum, Ioh. & Andream de & super premissis factum & in script. sub sigillo suo delibat. tunc idem jur. dic. super sacrum suum quod predictus Arbitrator, post confectionem scripti predict. & ante primum diem Octobris non fecit & delibavit in script. sub sigillo sua aliquod Arbitrium ordinationem neque judicium inter ipsum Andream & prefatum Ioh. de & super premissis in conditione predicta interius specificat pro ut predictus Andreas interius allegavit, &c.

And the opinon of the Court was, that this was a voyd Arbitrement; and the matter was well debated and argued by the Serjeants and Justices, and because that this Arbitrement was contrary to the said submission, Judgement was given, that the Plaintiffe, *nihil capiat per billam.*

This very caſe I doe confeſſe I have cited before which is reported by my Lord *Dyer*, as you ſhall finde in my firſt Tract of Arbitrements; that which occaſioned me to cite it againe in this place was the pleadings, which I found at large taken and reported (as they are here) by Serjeant *Bendlowes* in his Reports, which no doubt may and will be uſefull to Pleaders. And becauſe the Reporter is ſo ſhort, and ſo generall in the reaſon of the Judgement, I thinke it will not be amiſſe to light you in the darke, to ſhew you the things inſiſted upon, and the reaſons in a more particular way, of the Judgement, which were theſe; The Parties were bound to ſtand to the award of *A.* for delapidations, &c. and all other Suits, quarrels &c *ita quod*, the ſaid award were made &c. who arbitrates thus; the award of *A.* indifferently choſen by *I.* for the behalfe of the Obligor of the one part, and the Obligee of the other part, &c. and after he makes an award concerning the delapidations,

with a protestation that he would not meddle with the rest.

And here two things were insisted upon: First whether the award in this case were betwixt the parties or no, because 'tis said the award of *A.* &c. chosen by *I.* for the behalfe of the Obligor, &c. and I conceive the better opinion in my Lord *Dyer*, fol 216, 217. to be, that is was because I was not a party to the award, but only a deputy or factor &c.

The next thing was, whether the award being made of part only, with a protestation that he would not meddle with the residue were good or not: and in this case the opinion of the Booke is (agreeing with what I have said before) that the award is nought because it did not extend to all the points in the submission, viz. to the Suits and Quarrels, &c. and by his protestation not to meddle with them; he hath disabled himselfe to be an Arbitrator in the premises because he refused to make an Arbitrement according to the submission of the parties, who chose him

him for to arbitrate conditionally, *ut supra, viz.* So that the same award, &c. which is as well of Suits and Quarrels &c as of delapidations &c. so you have here a more full account of the grounds of the aforesaid Judgemen, which I hope will not be taken amisse, because *vis repetit*, in regard the reason given by *Benlowes* was too generall, and too difficult for weake judgements to discover, though better might; and if the latter might condemne me, yet I am confident the former will not.

Note (Reader) these cases of Actions for words, as also for Arbitrements, which I have here added, being applyed to the grounds laid downe in my first severall Treatises, and their reasons examined, will according to the severall cases be either vindicated or refuted.

Circumstances to be lookt into in submission; first, that it be in writing.

NOw that I have set forth the Law of Arbitrements, as also

the persons and things necessary in every Compromise; tis fit to consider such other circumstances as be requisite in the same.

Three things besides the persons and things ought to be observed in every submission.

First, that it be made by writing, with the parties Covenants or Bonds to bind their Heires and Executors to performe the award which shall be thereupon made, that the Arbitrators may know their power, and the parties how farre they are subject to their sentence and determination: and also lest their labour and judgement therein should be fruſtrate for want of meanes to compell the execution of the same: which may fall out in many cases where the submission is by word, as appeares by the Law of Arbitrements; hereby likewise will be prevented confusion, and incertainty, the certaine and unavoydable consequents of all transactions and agreements not committed to writing.

Of

Of the power given to Arbitrators.

Secondly, 'tis convenient that the very ſubmiſsion arme the Arbitrators with ſufficient authority to doe all things neceſſary for the ending of the controverſies, as to appoint times and places for their meeting, to examine and decide the matter compromitted, and to bring the parties with their proofes, evidences, and witneſſes thither together before them, and to puniſh the perſons defective, and to expound and correct ſuch doubtfull ſentences and queſtions as may ariſe upon their award inconvenient to either parties, contrary to equity and the Arbitrators intention; which inconveniences could not by them be foreſeene at the making of the award, as it often happens.

Of time and place.

Thirdly, that by the ſubmiſsion, convenient time and place be appointed

pointed for the giving up of their award to the parties or their Attornies, Deputies, or Assignes, lest the parties should otherwise be kept long in suspence, and expectation, with vaine hope of an endlesse end; and that the Arbitrators may before the set time finish their award; for whatsoever they doe arbitrate after that time is voyd, as you finde in the Law of Arbitrements. And now I shall set downe some few presidents, (usefull for most men) of deeds of submission to awards, and covenants to performe the same; as also conditions of obligations to that purpose; and certaine formes of Arbitrements thereupon made, a deed of submission may be made as followes.

An Indenture of submission to an award, with Covenants to performe the same.

THis Indenture made, &c. between *A. B.* of the one party and *C. H.* of the other party witnesseth; that

that the ſaid *A. B.* and *C. H.* doe by theſe preſents willingly compromit, and ſubmit themſelves, and either of them to the award, arbitrement, order, rule, doome, and judgement of *A. B.* and *C. H.* Arbitrators, indifferently named, elected, and choſen by the ſaid parties to arbitrate award, order, decree, and judge of, and upon all and all manner of Actions, Suits, Quarrels, Debts, Accounts, Treſpaſſes, Controverſies, Debates, and demands whatſoever had, made, moved, depending, or accrued, or which might have been had, or moved between the ſaid parties at any time or times before the date hereof (except one Action of Debt, &c. depending between the ſaid parties in the Kings Majeſties Court of Common Pleas, or before &c. and except one debt of 10. l. due to the ſaid *A. B.* by the ſaid *C. H.* for the price of certaine corn, &c. and except all Lands and Tenements of the ſaid *A. B.* and ſuch like exceptions,) &c. ſo alwaies that the ſame Arbitrators doe make their award,

award, order, and judgement of and concerning the Premiſes, to be made by writing indented under all their hands and Seales on this ſide, and before the tenth of *June* now next enſuing, and one part of the ſame deliver, or cauſe to be delivered by the ſaid Arbitrators to the ſaid *A. B.* or his certaine Attorney, or Attornies in that behalfe requiring the ſame the ſaid tenth day of *June* now next comming, at or in the Pariſh Church of *K.* in the ſaid County of *Yorke*; and the other part of the ſaid award to the ſaid *C. H.* his Attorney, or Attornies, Deputy, or Aſſigne, requiring the ſame at the ſaid day and place; and ſo alwaies that the ſaid Arbitrators doe not by the ſaid award order, or appoint any act or acts, thing or things to be done, or performed by and to any perſon or perſons, other then to or by the ſaid parties to theſe preſents, their Heires, Executors, Adminiſtrators, or Aſſignes, or ſome of them, and not to, or by any ſtranger or ſtrangers to this preſent ſubmiſsion. And

the

the ſaid *A. B.* and *C. H.* and either of them for themſelves, their Heires, Executors, and Adminiſtrators, and the Heires, Executors, and Adminiſtrators of either of them, doe by theſe preſents mutually covenant, conclude, promiſe, and agree to, and with the other his Executors, and Adminiſtrators, and every of them, that neither they, nor either of them will at any time hereafter revoke the Authority hereby given to the ſaid Arbitrators, nor diſcharge them, nor either of them in the ſaid faculty or power of Adminiſtration; and that they, and either of them, and the Heires, Executors, Adminiſtrators and Aſsignes of either of them, on their ſeverall parts ſhall, and will well and truly obſerve, performe, fulfill, and keep all and every clauſe, ſentence, article, ſubmiſsion and agreement in theſe preſents mentioned on his or their part to be performed and kept, according to the tenour, true intent, and meaning of the ſame; In witneſſe whereof we the ſaid parties

to

to these presents have interchangeably set to our hands and Seales the day and yeare above written.

Here we may take notice that the submission is conditionall, *Ita semper quod, &c.* so alwaies that the award be made concerning the premises, by deed indented under their hands and Seales before the tenth of *June, &c.* and in this case the award must be of all the things submitted, and agree with the submission in every particular circumstance of it, or else it will be voyd in the whole becaus 'tis conditionall, otherwise it would be where 'tis not conditionall. as you may finde in the Law of Arbitrements, pa 181. 189. 150.

Another conditionall clause in this submission (not usuall) is very observable, which is this: so alwaies that the said Arbitrators doe not order &c. any Act &c or thing &c to be done, to or by a Stranger. In this case I doe conceive, by reason that 'tis conditionall, if they shall award contrary it will avoyd the whole award: otherwise it would be

if

if the ſubmiſsion were not conditionall; for in ſuch caſe it would be voyd only as to the Stranger, and good to the parties, as it is in the Law of Arbitrements.

Of binding the Parties to performe the award.

THe parties may ſubmit themſelves to award by obligation, with condition according to the effect of the ſubmiſsion, but that ſeemeth dangerous, becauſe ſo they may for a trifle hazard the whole penalty of the Bond, which were too miſchievous; but to this it may be truly ſaid, it will the rather ingage to the performance of the award, and thereby determine Controverſies, which is the ſole aime, ſcope, and end of Arbitrements; and therefore that certainly is the beſt and moſt approved meanes which is moſt likely and probable to effect its end, and for ſuch a condition it may be made as followes.

The

The condition of an Obligation to performe an award.

THe condition of this Obligation is such, that if the above bounden *A. B.* his Heires, Executors, Administrators and Assignes, and every of them doe, and shall on his and their part and behalfe well and truly stand to, obey, performe, fulfill, and keep the award, arbitrement, order, rule, doome, and judgement of *S. T.* and *W. K.* Arbitrators indifferently elected and chosen, as well on the part of the said *A. B.* on the one party, as on the part of the above-named *C. D.* on the other party, to arbitrate, award, order, and judge of, and upon all and all manner of Actions, Suits, Quarrels, Debts, Accompts, Trespasses, Controversies, Debates, and Demands whatsoever had, moved, depending, or accrued, or which might have been had or moved between the said parties at any time or times before the date hereof,

hereof (except one Action of *Ejectione firmæ*; depending between the ſaid parties in the Kings Majeſties Court, commonly called, The Kings Bench, as by the Records thereof in the ſame Court remaining it doth and may appeare; and except out of this ſubmiſsion all Lands and Tenements of the ſaid *A. B.* or any like exception) to alwaies that the ſame award, arbitrement, order, and judgement of and concerning the premiſes be made by writing, indented under all their hands and Seales before ſuch a day next enſuing, and one part of the ſame delivered, or cauſed to be delivered by the ſaid Arbitrators to the ſaid *A. B.* or his certaine Attorney, or Attornies, Deputy, or Deputies in that behalfe, requiring the ſame the ſaid day, at, or in the Pariſh Church of *R.* in the ſaid County of *Y.* and the other part of the ſaid award be likewiſe delivered by the ſaid Arbitrators to the ſaid *C. D.* or his certaine Attorney, or Attorneys, Deputy, or Deputies in that behalfe requiring the ſame at

the ſaid day and place. And ſo that by vertue or occaſion of the ſaid award, neither of the ſaid parties, nor the ſeverall Heires, Executors, or Adminiſtrators of them, or any of them be to doe any act or thing, to, or by any Stranger to the ſame award, and to theſe preſents; and ſo as the ſaid *A. B.* doe not diſcharge the ſaid Arbitrators before the ſaid time; that then this preſent Obligation to be utterly voyd and of none effect, or elſe to ſtand, remaine, continue, and be in full ſtrength and vertue.

Upon this Condition I ſhall only obſerve this (which I might likewiſe have done before upon the ſubmiſſion by deed of Covenant) that if the Arbitrators ſhall award any thing touching the things excepted, that in ſuch caſe I doe conceive the whole award is voyd becauſe 'tis conditionall, and ought to be the ſame award, and made concerning the premiſes not excepted, which in that caſe 'tis not; otherwiſe it would be if the Arbitriment were not conditionall,

all, for in such case it would be voyd only as to the things not within the submission; *tamen quære* in the former case, because tis an award *de premissis*, and more.

Of the condition to performe an award of Lands.

AND if the award be concerning a title to Land, the words in the condition may be thus:

As well of, for, and concerning the right, title, interest, use, possession, and demand of and in the Mannour of *S.* with the appurtenances in *S.* in the said County of *Y.* and all Lands, Tenements, and other Hereditaments, with the appurtenanees in *S.* aforesaid, in the occupation of the said *A. B.* and his Assignes; as of and upon all Actions, Trespasses, Suits, Quarrels, Debts, Duties, Debates, griefes, inconveniences, and demands had, moved, stirred, or depending between the said parties concerning the said Mannour, Tene-

ments, and premiſſes, and any part thereof. And alſo, if the ſaid *A. B.* before the Feaſt of *P.* now next comming, doe ſhew unto the ſaid Arbitrators all ſuch writings as he hath concerning the ſaid Mannour and Premiſes, at ſuch time and place as the ſaid Arbitrators ſhall appoint for the ſight thereof. So alwaies that, &c. *ut ſupra*, That then, &c. *ut ſupra*.

Upon this condition I ſhall only obſerve thus much; that as the former was a ſubmiſsion generall conditionall, ſo this is a ſubmiſsion ſpeciall conditionall, which difference you ſhall finde in the Law of Arbitrements, and the differences of Pleading in ſuch caſe; As alſo that a man may binde himſelfe in an Obligation to ſtand to an award concerning the title of Land (which of it ſelfe is not arbitrable, nor is ſuch Arbitrement any plea in ſuch caſe, in barre of an Action) and that in ſuch caſe the Bond ſhall be forfeited for not performance of the award; as you may ſee in the Law of Arbitrements, pag 152. 153.

A

An Arbitrement or award of Lands, by which the party covenanteth to performe it.

THis Indenture made, &c. between *T. R* &c. of the one party, and *L. M.* of, &c. of the other party witneſſeth; That whereas there hath been, and yet is contention, varience, and Suit betwixt the ſaid parties, not only for and concerning the right, title, and intereſt of, and in a certaine quantity of ground, by eſtimation two Acres or thereabouts, lying in *K.* and adjoyning to the Mill of the ſaid *T. R.* in *K.* aforeſaid, claimed by either of the ſaid parties to be his owne Land and Inheritance; but alſo for and concerning certaine waies to the Mill of the ſaid *T.* through the ground of the ſaid *L.* from all the Townes, Villages, Hamlets, and other places in the North ſide of the River of *D.* bordering, lying, and being within the ſpace of ten miles of the ſaid Mill, and all other matters and controverſies betwixt the ſaid parties, for the

friendly ending and appeasing of which said variences and controversies, the said parties have compromitted and submitted, and by these presents doe compromit and submit themselves, and all matters in varience aforesaid, to the order, arbitrement, award, doome, and judgement of *F. W.* and *I. W.* Whereupon the said Arbitrators having viewed the said ground in varience, and perused divers writings and evidences concerning the same, and heard the testimony and witnesse of divers ancient men and neighbours dwelling nigh the said ground, as well touching the occupation and usage of the said ground by the said *I. K.* and his ancestors, as also the said wayes used unto the said Mill by the inhabitants aforesaid time out of minde, doe make and declare their award, order, doome, and judgement touching the premises, and every part of them; and the said *I. K.* and *L. M.* doe covenant severally either of them, to and with the other, for themselves, their Heires, Executors, and Administrators

ſtrators in manner and forme following. And firſt, the ſaid Arbitrators doe order, award, and judge, and the ſaid *L. M.* is ſo contented and agreed, and accordingly doth covenant and grant for him and his Heires, to, and with the ſaid *I. R.* his Heires, &c. that he the ſaid *T. R.* ſhall and may from henceforth have, hold occupy, and quietly enjoy to him and his Heires for ever the ſaid parcell or quantity of ground, containing by eſtimation two Acres lying and being on the North ſide of the River of *D.* directly over againſt the ſaid Mill, and demeane Lands of the ſaid *T. R.* in *K.* aforeſaid, as it is now bounded and meated forth with ſtones by the ſaid Arbitrators; and ſhall alſo have, make, and take to his and their owne proper uſe all the Trees now ſtanding or being, or that hereafrer ſhall grow in and upon the ſaid ground, and all other profits and commodities comming of and upon the ſaid ground (onely the thornes, briers, and herbage excepted and fore-prized) with free liberty,

entry, and paſſage, for the felling, hewing, leading, carrying away and taking of the ſame Trees, and all other the ſaid profits and commodities (except before excepted) at all and every time and times hereafter at his and their pleaſure. And that the ſaid *T. R.* his Heires and Aſsignes, and all and every other perſon and perſons, that ſhall come and bring any Corne to the Mill of the ſaid *T. R.* called *T.* Mill from the ſaid Townes, Villages, Hamblets, or any other place inhabited, ſhall have free liberties, wayes, and paſſage for the carrying, fetching, and bringing of their Corne to the ſaid Mill, as well over and through the ſaid parcell of ground ſet forth and meated as is aforeſaid; as alſo through, and over other the grounds of the ſaid *L. M.* in *K.* aforeſaid, in as ample and large manner and forme as the inhabitants of the ſaid Townes, Villages, and Hamblets, or other places have been accuſtomed and uſed to doe at any time heretofore, and as 'tis now moſt commonly uſed; and ſhall and may

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tye and faſten any of their Horſes, Mares, or other beaſts wherewith they carry any Corne to the ſaid Mill to any Tree growing, or other thing being in and upon the ſaid ground, ſo that the ſtring, cord, or rope exceed not the length of foure whole yards at the moſt; and that the ſaid *I. R.* his Heires, and Aſſignes ſhall, and may lawfully at all and every time and times ſo oft as need ſhall require, amend and repaire all and ſingular the wayes, and every part thereof for the eaſe, ſafeguard, and paſſage of the inhabitants of the ſaid Townes, Villages, Hamblets, and places inhabited, comming and going to and from the ſaid Mill without any let, trouble, vexation, or contradiction of the ſaid *L. M.* his Heires or Aſsignes, or any of them. And that the ſaid *L. M.* his Heires, or Aſsignes, ſhall at all times within the ſpace of two yeares next enſuing the date hereof, make knowledge, and ſuffer, or cauſe to be made, knowledged, and ſuffered, all and every act and acts, thing and things,

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as shall be reasonably devised, or advised by the said *T. R.* his Heires, or Assignes, or his or their learned Counsell, at the onely proper costs and charges in all things of the said *T. R.* his Heires, or Assignes, for the further assurance and better making as well of the said part, or quantity of ground containing about two Acres, as also of the said ways in manner and forme before expressed unto the said *L. M.* his Heires, or Assignes for ever, according to the true effect, meaning and purport of these presents; In consideration whereof it is further ordained, awarded, deemed, and judged by the said Arbitrators; and the said *T. R.* doth so covenant, &c. that he the said *L. M.* his Heires, and Assignes shall, and may have, take, and enjoy only the grasse and herbage, with the thornes and briers yearely growing, or being in or upon the said parcell or quantity of ground so bounded or set forth as is aforesaid. And in further consideration of the premises the said *T. R.* hath paid to the said

L. M.

M. at the inſealing hereof, at the requeſt of the ſaid Arbitrators, the ſumme of twenty pound, &c. in witneſſe whereof not only the ſaid parties to theſe preſent Indentures of award interchangeably have put their Seales, and ſubſcribed their names, but alſo the ſaid Arbitrators to both the partes of theſe Indentures have put their Seales, and ſubſcribed their names, the day and yeare, &c.

Another Arbitrement of Debt, where the parties are bound to performe it.

TO all Chriſtian people, to whom this preſent writing of award indented ſhall come, *G. W. G. N. S. S.* and *I. N.* of, &c. ſend greeting in our Lord God everlaſting. Whereas divers Suits, &c. between *I. W.* and *I. S.* of &c. for pacifying, ordering, and ending whereof, the ſaid *I. W.* and *I. S.* have bound themſelves either to other in the ſumme of, &c. of lawfull Engliſh money, by their ſeverall

ſeverall obligations, bearing date, &c. with conditions there under written, to ſtand to, &c. *ut ſupra*, of the ſaid *G. I. S.* and *T.* Arbitrators indifferently elected and choſen, as well on the part and behalfe of the ſaid *I. S.* as of the ſaid *T. W.* to award, arbitrate, order, rule, judge, end, and determine all, and all manner of Suits, Debts, Actions, Controverſies, Debates, and Demands whatſoever depending between the ſaid *I. S.* and the ſaid *I. W.* and *W. W.* his Sonne and Heire, ſo that the ſaid award were made and given up in writing under the hands and Seales of all the Arbitrators, at or before the, &c. at, &c. as by the ſaid obligations and conditions amongſt other things doth and may appeare. Know you now, that the ſaid *G. I. S.* and *T.* taking upon them the charge and burthen of the ſaid award, and having deliberately heard the griefes, allegations, and proofes of both the ſaid parties, doe by theſe preſents arbitrate, award, order, deeme, and judge of and concerning the

the premiſes in manner and forme following, that is to ſay; Firſt they doe award, order, deeme, and judge by theſe preſents, that the ſaid *I. S.* his Executors, or Adminiſtrators, or ſome of them, ſhall well and truly pay, or cauſe to be paid unto the ſaid *I. W.* or his certaine Attorney, Executors, or Adminiſtrators, or ſome of them, at or before the, &c. at or in the, &c. two hundred pound of, &c. at or before the, &c. other two hundred pound of, &c. in full ſatisfaction of foure hundred pound, for payment whereof the ſaid *I. S.* ſtood bound to the ſaid *I. W.* in, and by foure ſeverall Obligations, whereof two are already forfeited, as thereby may appeare. Alſo the ſaid Arbitrators doe award, order, &c. that the ſaid *I B.* his Executors, and Adminiſtrators, or ſome of them at their, or ſome of their coſts and charges, ſhall before the, &c. cauſe and procure, that all Suits, Bills, Plaints, and informations heretofore commenced againſt the ſaid *I. W.* in any Court or Courts whatſoever, either by

by or in the name of the ſaid *I. S.* or by or in the name of *H. S.* his Sonne, or by or in the name of our Soveraigne Lady the Queenes Majeſty that now is, and of every or any of them, or by and in the name of any other perſon or perſons, by the conſents, meanes, and procurements of them, or any of them, ſhall thence-forth ſurceaſe, and be no further proceeded in by them, nor any of them; or by the meanes, conſent, or procurement of them, or any of them. And before the, &c be utterly diſcontinued and made voyd.

And the ſaid Arbitrators doe further award, order, deeme, and judge by theſe preſents, that for the ſure payment of the ſaid ſumme of foure hundred pound, the ſaid *I. S.* and *G. S.* within two dayes next after tender or delivery of the one part of this preſent award to the ſaid *I. S.* ſhall well and ſufficiently make, ſeale, and deliver as their Deeds to the ſaid *I. W.* in, &c. one Obligation or writing obligatory ſufficient in the Law, wherein, and whereby the ſaid

laid *I. S.* and *G. S.* shall acknowledge themselves, and either of them to be joyntly and severally bounden to the said *I. W.* in the summe of foure hundred pound of, &c. with condition thereupon in due forme of Law, indorced for the sure payment of the said summe of two hundred pound, parcell of foure hundred pound, at or in the, &c. before, &c. and the other two hundred pound, residue of the said summe of foure hundred pound, at or before the, &c. and at, &c. Also the said Arbitrators doe further award, &c. that the said *I. S.* his Executors, or Administrators, or some of them shall and will before the, &c. at his and their owne proper costs and charges, cause and procure to be cancelled and made voyd one Recognizance of two hundred pound, bearing date the, &c. knowledged and inrolled in the Queenes Majesties high Court of Chancery, wherein and whereby the said *I. W.* standeth bounden to the said *I. S.* in the said summe, with condition thereunto annexed, that if

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the ſaid *T. W.* his Heires, Executors, and Adminiſtrators, and every of them ſhould well and truly obſerve, performe, fulfill, and keep all and every the covenants, grants, articles and agreements, which on his and their parts were to be obſerved, performed, fulfilled and kept, contained and ſpecified in one Indenture bearing date, &c. had, and made between the ſaid *T. W.* on the one party, and the ſaid *I. S.* on the other party, concerning the marriage of *W. W.* Sonne and Heire apparent of the ſaid *T. W.* and *A. S.* Daughter of the ſaid *I. S.* according to the true intent, purport and effect of the ſaid Indenture; that then the ſaid Recognizance to be voyd and of no effect, or elſe to ſtand, &c. as by the ſaid Recognizance more plainly and at large appeareth. And alſo that the ſaid I. *S.* his Executors, or Adminiſtrators, or ſome of them ſhall, and will before the Feaſt of, &c. deliver, or cauſe to be delivered unto the ſaid *T. W.* his Executors, or Adminiſtrators, or ſome of them in the ſaid

now

now dwelling house of the said *T. W.* aforesaid, the said Indenture of Covenants concerning the foresaid Marriage, cancelled or to be cancelled. In witnesse whereof the said Arbitrators to both parts of this present award indented, have set their hands and Seales, dated the, &c.

An Arbitrement, or award of Debt, made by an Earle upon submission by Bond.

TO all true Christian people to whom this present writing of award indented shall come; The right Honourable *G.* Earle Marshall of *England*, &c. sendeth greeting &c. Whereas divers Suits, Variances, Controversies, and Debates heretofore have been had, moved, and depending between *T. G.* of *T.* in the County of *I.* Yeoman, on the one party, and *F. M.* of *H.* in the said County Gent. on the other party, for pacifying, ordering, and ending whereof the said *T. G.* and *F. M.* have bound themselves either to other in

the ſumme of foure hundred pounds, &c by their ſeverall Obligations, bearing date, &c now laſt paſt, with condition there under written, to ſtand to, abide, performe, fulfill, and keepe the award, order, doome, judgement, and determination of the ſaid Earle, indifferently elected and choſen by the mutuall conſent, and at the earneſt and humble requeſt, and petition of both the ſaid parties, to arbitrate, award, order, judge, and determine of, for, and concerning all, and all manner of Actions, Suits, quarrels, debts, duties, and demands whatſoever, had moved, or depending, or which hereafter might be had, moved, or depend between the ſaid parties, by reaſon of any matter, thing, or things whatſoever accrued, or growne from the beginning of the World, until the day of the date of the ſame Obligation; ſo that the ſame award were made in writing, indented under the hand and Seale of the ſaid Earle before the nineteenth day of, &c. and the one part of the ſame writing indented,

dented, delivered, or cauſed to be delivered by the ſaid Earle to the ſaid *I. G.* to his Executors, &c. or any of them, or to their, or any of their uſe, upon, or before the ſaid nineteenth day of, &c. at, or in the now Manſion or Mannour Houſe of the ſaid Earle, called *S.* in, &c. and the other part thereof to the ſaid *F. M.* &c. *Ut ſupra*, as by the ſaid Obligations and Conditions thereof both, and may more at large appeare. Know you now, that the ſaid Earle of his meere good will and favour, which he beareth to both the ſaid parties, and of the great and honourable reſpect which he hath of their future quietneſſe, taking upon him the charge and burden of the ſaid award, and having delibe-rately at ſundry times at large heard, and conſidered the grieſes, allegati-ons, and proofes of both the ſaid parties, doth by theſe preſents ar-bitrate, award, order, deeme, and judge of and concerning the premiſ-es, in manner and forme following, viz. That the ſaid *F M.* his &c. or

some of them, shall well and truly pay, or cause to be paid unto the said I. S. his, &c. or some of them, the summe of one hundred and sixty pound, of, &c. in the, &c. in manner and forme following, viz upon, &c eighty pound thereof, and upon, &c other eighty pound thereof reshue, and in full payment and satisfaction of the said summe of one hundred and sixty pound, and that in consideration thereof the said I. G shall permit and suffer all Suits, quarrels debts, duties, and demands growne before the date of the said Obligation to cease and be discontinued, and no further prosecuted by him, or any other by his procurement. And furthermore forasmuch as the said R. M. is charged as is aforesaid, for the payment of the said sum of a hundred & sixty pound, partly by reason of a Judgement heretofore given for the said I. G. against one L. S. in the Q. Majesties Court, commmonly called, The Kings Bench, in an Action of Debt, in which the said I. G. hath recovered

ed against the said *L. S.* two hun-
dred eighty five pound, and foure
pence, as by the Record thereof, re-
maining in the said Court appear-
eth. His honour doth further a-
ward by these presents, in relieſe and
ease of the said *F. M.* That if the
said *F. M.* his, &c or any of them,
doe well and truly pay, or cause to
be paid the said summe of one hun-
dred and sixty pound according to
the true meaning of this present a-
ward; And if the said *L. S.* his Heirs,
&c. or some of them, shall not well
and truly satisfie, content, and pay
unto the said *I. G.* his, &c. the said
severall summes above in this award
appointed to be paid by the said *F.*
M. before the severall dayes herein
above mentioned; That then, and at
all times after any such default of
payment so to be made by the said
L. S. his, &c. the said *I. G.* his, &c.
shall permit and suffer the said *F. M.*
his Executors, and Administrators,
and every of them, at the costs and
charges of the said *F. M.* his Execu-
tors, and Administrators, effectually

to prosecute, or cause to be prosecuted, all, and every such Execution, and Executions upon the said Judgement so had for the said *T. G.* against the said *L. S.* as to them, or any of them, or the learned Counsel of them or any of them shall seem good. And all and every sum and sums of mony thereby to be obtained to take, and convert to the onely proper use and behalfe of the said *F. M.* his Executors, and Administrators, without any account, recompence, or payment thereof, or therefore to be yeelded or made to the said *T. G.* his &c. or any of them, any thing in this present award conteyned, &c. notwithstanding. In witnesse whereof the said Earle to both the parts of this present award, hath set his hand and Seale, dated the, &c.

Note (Reader) all such Covenants and Conditions as are usually made for the assurance or enjoying of Lands or Tenements, Goods and Chattels may be inserted into awards, as shall seeme good unto the Arbitrators or parties.

Of

Of notice of the Arbitrement.

AND when the Arbitrators have made their award according to the ſubmiſsion, though they are not bound to give notice, but the parties are to take notice thereof at their owne perill, to ſave the forfeiture of their Bonds (as you ſhall finde the Law to be cleare in the firſt Tract of Arbitrements) yet it ſeemeth convenient and agreeable to equality and a good conſcience that they ſhould not be ſurpriſed, but that the Arbitrators ſhould in due time before that either party be to performe any part thereof, give notice of the ſame unto them, leſt otherwiſe they breake their Bonds, and Covenants in that behalfe (if any ſuch be) before they have knowledge of the ſame.

The finall cause and effects of Arbitrements.

AND thus by that which hath been set forth and discoursed in this and my former Treatise of Arbitrements, it doth evidently appeare, that the scope and end of Arbitrements and other Judgements is all one; and chiefly, the finall determination of Strifes, Suits, and Controversies, and so consequently their effects not much different. But the Law seemes more favourable to Arbitrements then other Judgements, insomuch as by Arbitrators the strict course and tedious ceremonies of Law Suits (which are wont most commonly to weary Suitors, and to dive somewhat too deepe into their Purses) are cut off, and shorter decisions by them made, with little or no cost at all. But to make this good, this caveat (Reader) must be observed, lest this course prove as bad, if not worse then a Law Suit; that there be honest, indifferent, and judicious

cious Arbitrators chosen, not only such as are just men, but such as are skilfull and knowing in the matters in controversie, that their ignorance may not make them erre, and the parties suffer as much by their folly, as others no doubt have done by their Arbitrators injustice and knavery; for unequall and insufficient Arbitrements doe often cause tedious Suits, and those no small expence, so that this course which the people make choise of for their ease, proves often worse then the disease; but I have touched upon this before, and therefore this here shall suffice.

An Award made by an Arbitrator touching Copy-hold Land, between an Alderman of London and another.

TO all Christian people, to whom this present writing of award indented shall come, *H. T.* of *Lincolnes Inne*, in the County of *Middlesex* Esquire, sendeth greeting in our Lord God

God everlasting; Whereas Suit, Variance, and Debate heretofore had been, and yet is had, moved, and depending, as well in the Queenes Majesties Court of Requests, as in divers other Courts, between *R. M.* Citizen and Alderman of *London* on the one party, and *R. E.* of *K.* in the County of *M.* Yeoman of the other party, of, for, and concerning the right, title, use interest, and possession of divers Lands, Tenements, and Hereditaments, with the Appurtenances, lying and being in *K.* within the Mannour or Lordship of *T.* within the said County of *M.* and conteyning by estimation about two hundred Acres of Land, Meadow, Pasture and Wood, commonly called or knowne by the name of *Hebin* Land; for the appeasing finall end and determination of all which said Suits, Variances, and Debates, the parties aforesaid have submitted and compromitted themselves to stand to, obey, and performe the Arbitrement, Ordinance, Doome, and Judgement of the said *H. T.* Arbi-

or, indifferently elected, named, and choſen by both the ſaid parties, indifferently to Arbitrate, Order, Deeme, Award, and Judge, as well for, and concerning the eſtate, right, title, intereſt, uſe, and poſſeſſion of all and ſingular the ſaid Premiſſes, and every part and parcell thereof; as alſo of, for, and upon all manner of Actions, Suits, quarrels, Debts, Debates, Treſpaſſes, and demands whatſoever heretofore had, moved, ſtirred or depending between the ſaid parties from the beginning of the World untill the twentieth day of *November* laſt paſt, as by their ſeverall writings Obligatory, whereof either of the ſaid parties ſtand bounden to the other of the ſame parties in the ſumme of two hundred pound, bearing date the ſaid twentieth day of *November*, and made for the true performance of the ſaid Award, more at large it doth and may appeare. Whereupon the ſaid *I. H.* having taken upon him the charge and burden of the ſaid Arbitrement, and having preſent before him

him both the said parties, and having also very advisedly weighed and considered the titles, claimes, allegations, and proofes of either of the said parties to the said Premises. And upon sight and due consideration of all the Evidences, Writings and proofes shewed and made before the said *H. T.* by both the said parties doe Award, Arbitrate, Order, Deeme, and Judge of the Premises in manner and forme following, that is to say: First, I the said Arbitrator doe Award, Deeme, Order, and Judge, that the said *R. E.* or his Heires, at all times within three yeares next ensuing the date of these presents, upon lawfull and reasonable warning by the Steward, Bayliffe or Reeve of the said Mannour of *T.* for the time being, shall at the next Court so to be holden, then next after such warning had, surrender and give up into the hands of the said *R. H.* his Heires or Assignes in open Court, according to the Custome of the said Mannour, to the use of the said *R. H.* and his

Heires

res for ever, all and ſingular the ſaid Lands, Tenements, and Hereditaments hereafter in theſe preſents mentioned, expreſſed, and declared, that is to wit; one Mannor or dwelling Houſe, wherein the ſaid *K. E.* now dwelleth, with all Edifices and Buildings, &c And furthermore, I the ſaid *H. T.* doe award, ordaine, deeme, and judge by theſe preſents, that the ſaid *K. H.* his Heires or Aſsignes at the ſaid Court, where and when the ſaid Surrender ſhall be ſo made, ſhall aſſure and convey unto the ſaid *K. E.* or to his Heires, that ſhall ſo ſurrender the premiſes as aforeſaid by Copy of Court Roll, according to the cuſtome of the ſaid Mannour, or otherwiſe as by the ſaid *K. E.* his Heires and Aſsignes, or any of them, or by his or their learned Counſell, ſhall be reſonably deviſed or adviſed, and at the proper coſts and charges of the ſaid *K. E.* his Heires and Aſsignes, not altering by the ſaid aſſurance or aſſurances ſo to be deviſed or adviſed as is aforeſaid, any

Cuſtome,

Cuſtome, Liberty, or Juriſdic
of the ſaid Lordſhip, Mannour
other the Premiſes, with all and
gular the ſaid Lands, Tenements,
Hereditaments, and all other
Premiſes, with their appurtenan
whatſoever, before by theſe preſe
ordered, and judged to be ſurre
dered as is aforeſaid (foure Acres
Land now in the occupation of, &c.
parcell of the Premiſes to be choſe
by the ſaid *R. H* &c. onely exce
ted and fore-prized) to have and
hold the ſame Lands, Tenement
and all other the Premiſes with th
appurtenances (except before ex
cepted) unto the ſaid *R. E.* and
his Heires Males, incorrupt wit
in the fourth degree of Conſa
guinity, according to the ancie
Cuſtome of the ſaid Mannour. A
if it happen that the ſaid *R. E.* d
deceaſe before the ſaid Surrend
made as is aforeſaid, Then to ha
and to hold the ſaid Premiſe
with the appurtenances, to th
Heires of the ſaid *R. E.* which
ſhall ſurrender the ſame, and
hi

Heires males incorrupt within the fourth degree of Consanguinity, &c.

An Award, reciting that either of the Parties stand bound to other to performe the Award, and that the Award is made before the prefixed time in the Obligation, and with the full consent of both the parties.

TO all Christian People, to whom this present writing indented of award shall come, *K. W.* and *R. C.* send greeting in our Lord God everlasting. Know yee, that whereas Varience, Strife, Debate, and Controversie hath heretofore been had, moved, and stirred between *A. B.* of *C.* and *D. E.* of *F.* for, and concerning the right, title, interest, use, possession, and occupation of, &c. for the appeasing and ending whereof, either of the said parties by their mutuall assents, consents, and agreements, have submitted, compromitted, and bound them-

themselves either to other by their
severall writings Obligatory, bea-
ring date, &c. in the summe of, &c.
to stand to, abide, obey, observe,
performe, fulfill, and keepe the A-
ward, Arbitrement, Ordinance,
Doome, and Judgement of us, &c.
Arbitrators indifferently elected
and chosen between the said parties
to arbitrate, order, &c. of, and for
the Premises, as by the said severall
Obligations, with conditions for
the performance thereof more at
large appeareth. Whereupon we the
said Arbitrators taking upon us the
labour, businesse, and charge of the
same award, and willing to set the
said parties at a finall peace, unity,
and concord, for, and concerning
the Premises, have by good advice
and deliberation seen, heard, and
throughly examined both their ti-
tles, allegations, evidences, and
proofes, in, and to the said Premi-
ses; and thereupon before the day
and time appointed unto us by the
said Obligations, for the making,
giving up, and finishing of the said
award,

Award; we the ſaid Arbitrators by and with the full Aſſent, Conſent, and Agreement of both the ſaid parties, do make, publiſh, declare, and give up this our preſent Award betweene the ſaid parties of, for, and concerning the premiſſes, in manner and form following: Firſt, we award, ordaine, deeme, and judge, That &c. Alſo we award &c. And finally, we award, ordaine, deeme, and judge, &c. In witneſſe whereof we the ſaid Arbitrators, and alſo both the ſaid parties to the Award, have interchangeably put our Hands and Seales, the tenth day of &c. in the twentieth yeare of the Reigne of &c. by the grace of God of *England* &c. King, Defendor of the Faith, &c.

Queries.

Certaine Queries or doubtfull Cases collected by the same Author out of our old and new Bookes, and put under their proper Heads or Titles, together with the Bookes cited pro and contra, very useful and necessary for all Students in the Law.

Acceptance.

A Man makes a Feoffement upon condition of reinfeoffement, whether acceptance of another estate than is contained in the Condition shall be a Dispensation of the Condition, or not? *Quere.* And see *Conditions.* 9.

A Bishop makes a Lease for years rendring Rent, after makes a new Lease

Leaſe, with confirmation of the Deane and Chapter, and dies, if by his death the firſt Leaſe be void, ſo that the Succeſſor cannot make it good by acceptance of the Rent, or not. *Quære.* 32 H. 8. *Dyer. fo.* 46. *pl.* 9.

Tenant in taile makes a Leaſe for yeares to comuence after his death, rendring rent, and dies, the iſſue Accepts the Rent. Whether this ſhall barre his entry or not? *Quære. Dyer. fo.* 79. *a. pl.* 7. *fo.* 69. *pl.* 30. *fo.* 246. *a. pl.* 9. *Cooke* upon *Littleton*, *fo.* 44. *a. Pl. Com. fo.* 430. & 437. *a.*

Tenant in taile makes a Leaſe for yeares rendring 20 *s.* Rent, and after Leaſes 19 *s.* and dies, and the Iſſue Accepts the 12 *d.* whether he may diſtraine for the 19 *s.* more or not? *Quæ.* 13 & 14. of the Queene *Dyer. fo.* 304. 33.

Accord.

WHether an Accord with satisfaction be a good Plea in an Attaint, or not, *Quære* 13. E. 4. 1. Br. *Attaint.* 91. 13. E. 4. 5. Br. *Attaint.* 118. 35. H. 6. 30. Br. *Attaint.* 12. 6. E. 6. Dyer. *fo.* 75. *pl.* 27. 6. Rep. *fo.* 44 *a.*

Acquittance.

A Man bargaines and sels a Manour for 20 *l. solvend.* at such a Feast; and in the Indenture there are divers Covenants; for observance of all which Covenants and Payments he bindes himselfe in 40 *l.* whether in debt for this, the Defendant may plead payment without an Acquittance, or not? *Quære* 26. H. 8. Dyer. *fo.* 6. *pl.* 28. H. 8. Dyer. *fo.* 25. *pl.* 160.

Admini-

Administrator and Administration.

AN Executor payes 20 *l.* for the Testator, and retaines a horse of the Testators of the same value; whether this be an Administration or not? *Quære* 21. *E.* 4. 21. *Br. Title Administration* 37.

Whether Probate of a Will, or taking Letters of Administration without doing of any more, shall be said an Administration or not? *Quære* 26. *H.* 8. 7. *Br. Administration* 2. 20. *H.* 6. 1. *Br. Administration* 5. 34. *H.* 6. 14. *Br. Administration* 7. 37. *H.* 6. 27. *Br. Administration* 31.

Annuity.

WHether an Annuity may be granted over, or not? *Quære* 41. 3. 27. *Br. Annuity* 8. 19. *H.* 6. 42. *Br. Annuity* 19 21. *E.* 4. 20 *Br. Annuity* 37. 14. *H.* 4. 5. *Br. Deputy, &c.* 4.

Whether a releaſe of Actions reals be a barre in an Annuity or not? *Quere* 2. *H.* 4. 13. *Br. Annuity* 43. 11. *Hob.* 85. *Br. Debt.* 66. See *Dyer. fo.* 24. *pl.* 149. an inheritance in a *nomine pœne*. See *Davis Reports, fo.* 6. *a.* and Title Releaſes 2.

Appeale.

A Man for Felony adjudged to death, and pardoned, is after put to anſwer to an Appeale of Felony, for a Felony done before, and whether he may or no? *Quære*: For the Appeale was once determined, *Br. Appeale* 10. 6. *H.* 4. 6. *Br. Corone* 11. & 147. *Br. Charter of pardon.* 44.

Whether a Releaſe of all Actions Reall and Perſonall, be a Barre in an Appeale of death, or not? *Quere. Littleton, Sect.* 502. 9. *H.* 4. 2. *Br. Tit. Appeale* 29.

An Appellor dies within the yeare, whether the Appeale ſhall deſcend to others

hers or not? *Quere.* 11. *H.* 4. 11: *Br. Appeale* 30. 9. *H.* 7. 5. *Br. Appeale* 88. E. 4. 1. *Br. Appeale* 104. 38 *H.* 6. 3. *Br. Appeale* 141. 9 *H.* 7. 5. *Br. Appeale* 144. 16. *H.* 7. 15. *Br. Appeale* 156. *Dyer. fo.* 69 *pl.* 31.

A woman who hath Title of an Appeale, *De morte viri*, takes husband, she loses her Appeale; but if the woman convicts the Defendant, and then takes husband, whether in such case she may demand execution or not? *Quere.* 1. *M.* 1. *Br. Appeale* 109 E. 4. 72. 73. *Br. Appeale* 112. 11. *H.* 4. 8. *Br. Appeale* 148.

Apportionment.

A Man makes a Leafe for yeares of Land, and of a ſtock of Sheepe, rendring certaine Rent, all the Sheep die, whether the Rent ſhall be apportioned or not? *Quare.* 35. *H.* 8. *Dyer. fo.* 56 *pl.* 15 12. *H.* 8. *fo.* 11. *b. pl.* 5. *Rep. fo.* 17. *a. Spencers Caſe.* 7. *H.* 7. 8 & 5. *Br. Appertionment.* 24. 4. *of the Queene Dyer. fo.* 212. *pl.* 37, 38.

Arbitrement.

WHether Arbitrators may arbitrate Free-hold or not? *Quere.* 14. *H.* 4. 18. & 19. *Br. Arbitrement.* 15. 12. *Ass. pl.* 25. *Br. Arbitrement* 30. 31. *E.* 3. 26. *Br. Arbitrement.* 53. See my first Treatise of Arbitrements, in the beginning thereof.

A man is bound to stand to the Arbitrement of *I N.* who arbitrates that he shall pay 10 *l.* whether the obligee may have debt upon the Obligation, and upon the Arbitrement also, or not? *Quere.* 33. *H.* 62. *Br. Det.* 23. See my Treatise of Arbitrements abovementioned.

Arrearages.

A Man recovers a Mannour in a *Precipe quod reddat*, and doth not sue execution in a yeare or two, and after sues execution, whether he shall have

ve the Arrerages and Services due
ter the Judgement or not? *Quere.*
. E. 3. 16. *Br. Arrearages* 5. See the
e Case immediately following.

Grantee of a Rent Charge in Fee
traines for Arrerages, and then
rants it over, whether the Arrera-
be loſt or not by the Aſsignement.
Quere. See my *Rep. pa.* 103. *pl.* 178.

A man who hath Title of Entry
r non-payment of Rent upon a
eaſe, doth not enter by the ſpace of
yeare or two after the forfeiture,
hat remedy for the Rent incurred
ter the Title of entry. *Quere.* 6. *H.*
3. *Br. Arrearages* 11.

Aſſets by diſcent, and Inter-maines.

And deſcends to an Heire, and he
aliens it and after re-purchaſes it,
hether it ſhall be Aſſets or not?
uere. 26. H. 8. 1. *Br. Aſſets, &c.* 1.
27.

Land

Land of 40 s. a yeare discends charged with the Rent of 26 s. by a yeare, this is not Assets of 40 s. *tamen hoc quaere detur*, where the charge is of an estate of Freehold, but here the Charge is but a Chattell, and the Freehold not charged. *Idem Quere.* 43. E. 3. 9. Br. Assets. 9.

Whether a Reversion shall be Assets in Debt, or a *Formedon*; or a rent upon a Lease for life, shall be Assets in a *Formedon* or not? *Quere* 40. E. 3. 38. Br. Assets 12. 7. H. 6. 3. & 4. Br. Assets 17. 16. E. 3. Br. Assets, 23. 38. E. 3. 32. Br. Assets 30. Cooke upon Littleton fo. 374. b.

An Executor payes a Debt of his proper goods, and retains goods of the Testators to the value, whether these shall be Assets or not? *Quere*. 21. E. 4. 21. 22. Br. Assets. 6. 20. H. 7. 4. & 5. Br. Assets inter maines. 12. See Cooke upon Littleton, fo. 283. a.

Whether a Tenancy escheated after the death of the Ancestor, shall be

...ffets to the Heire, for to barre ... by a Warranty or not? *Quære.* ...way. 104. *pl.* 14. See *Perkins, fo.* 20. ...oke upon *Littleton, fo.* 117. *a.* and ... *H.* 8. *Dyer. pl.* 15.

If an Executor releaſe a Debt, or ...charge one in Execution, whether ... ſhall amount to as much as Aſſets ...eceived or not? *Quære. Hobarts Rep.* ...81.

Attachment of Goods.

WHether an Attachment in Court Baron be forfeited by ... non-appearance of the party or ...? *Quære* 28. *H.* 6. 9. *Br. Attach.* ... 34. *H.* 6. 49. *Br. Attachment* 19.

Attaint.

WHether an Attaint lyes in a ... Writ of Rediſſeiſm- or not? ...d whether the Rediſſeiſm be more ...han an Inqueſt of Office? *Quære.* 18. *H.* 8.

H. 8. 1. *Br. Attaint.* 2. 2. *H.* 4. 2. *Attaint.* 22. 40. *Ass. pl.* 23. *Br. Attaint.* 79. 11, *Rep.* Sir *Jo. Heydons Case.*

Whether an Attaint lyes in a Writ of inquiry of waste or not? *Quere.* 48. *E.* 3. 19. *Br. Attaint.* 21. 2. *H.* 4. 2. *Br. Attaint.* 22. 11. *Rep. Sir John Heydons Case.*

In an Attaint one of the Petty Jury pleades an Accord with satisfaction made betwixt the Plaintiffe and the Defendant, whether an Accord with satisfaction be a good Plea in an Attaint, and whether the petty Jury may plead that which is betwixt the Plaintiffe and Defendant or not? *Quere.* 13. *E.* 4. 1. *Br. Attaint.* 91. 17. *E.* 4. 5. *Br. Attaint.* 118.

Attornement.

LEssee for life is disseised by the Grantee of the reversion, and after recovers in an Assize; whether this be an Attornement or not, *Quere* 2.

Rep. Tookers Case the latter end: *Cooke* upon *Littleton fo.* 319. *a.* 18. E. 3. *b.* 6. *Rep.* 69. *b. Sir Moyle Finches Case.*

Bayle and Mainprize.

WHether the Bayle may render the body of the Defendant in the Common Bench after a Writ of Error brought by him? or Whether the Bayle be in this case forfeited or not? *Quære. Hobarts Rep. pa.* 157. *pl.* 142.

Baylie.

A Man distraines as Baylie, and is not Baylie, and after the Lord agrees to it, whether it be good or no? *Quære.* 26. *H.* 8. 8. *Br. Baylie, &c.* 1. *H.* 4. 30. *Br. Baylie, &c.* 4.

Baron

Baron and Feme.

BAron and Feme obligees, the Baron onely brings Debt, whether it will lye or not? *Quere.* 3. *H.* 6. 36. *Br. Baron and Feme,* 2. 43. *E.* 3. 10. *Br. Baron and Feme,* 14. 39. *E.* 3. 5. *Br. Baron and Feme* 55. 43. *E.* 3. 8. *and* 16. *Br. Baron and Feme* 64.

Baron and Feme bound in an Obligation of an 100 *l.* for a Releaſe made to them of Land *de jure uxoris,* the Baron dies, whether this Obligation ſhall binde the Feme or no? *Quere* 44. *E.* 3. 33. *Br. Baron and Feme,* 77.

Whether a man may be bound to pay money to his wife or not? *Quere,* for I doubt of it 27. *H.* 8. 27. *Br. Conditions* 8. *Cooke* upon *Littleton, fo.* 206.

Whether Baron and Feme may be Conſpirators or not, *Quare.* 38. *E.* 3. 3. *Br. Conſpiracy* 14.

In

In an Avowry againſt a Baron and Feme, whether the Baron by himſelf, or whether the Baron and Feme together may diſclaime or not, *Quære.* See *Title Diſclaimer.* 1.

Barre.

IN an Annuity the Defendant ſaid that a Tenth was granted to the King by the Clergy, and theſe Arrearages were leavied by the Collector, as the portion of the Plaintiffe due to the King, Judgement, &c. whether this ſhall barre the Plaintiffe or not. *Quære.* 21. *H.* 7. 12. and 16. See *Barre.* 49. *&* 50.

Whether he which is barred in Debt againſt an Executor, upon a fully adminiſtred found againſt him, ſhall have a new Writ of Debt upon Aſſets come after or not *Quære.* 4 *H.* 4. *Br. Debt* 106. and *Executors* 85. 9. *H.* 6. 36. 37. *Br. Executors* 70. See the 8. *Rep. fo.* 134. *a. b.*

Tenant

Tenant for life the Reverſion to an Ideot, an Uncle Heire apparent to the Ideot leavies a Fine, and dies, Tenant for life dies, the Ideot dies; whether the iſſue of the Uncle who leavied the Fine ſhall be barred by it or not. *Quere.* See my *Rep. pa.* 94. *pl.* 164. *& pa.* 146. *pl.* 216.

Ceſſavit.

LOrd Meſne and Tenant, the Meſne ceſſes in payment of Servicesby two yeares, and after purchaſes the Tenancy; whether a *Ceſſavit* lies againſt him or not. *Quere. Keilw. Caſus incerti temporis, fo.* 104. *pl.* 15. *Sec.* 27. *H.* 8. 28. Br. *Ceſſavit.* 1.

Champerty.

COuncell agrees with his Clyent before Action brought, that he ſhall have part for his wages, whether this be *Champerty* or not. *Quere.* 12. *H.* 4. 26. 13. *H.* 4. 16. *&* 17. Br. *Champerty* 3.

The

The Statute ſpeakes onely of Plea, and therefore whether *Champerty* lyes upon a Suit in a *Subpœna* or not. *Quære.* 15. *H.* 7. 2. Br. *Champerty* 6.

Charge.

A Man makes a Leaſe for life, and charges the reverſion which after comes to the Tenant for life by diſcent, whether he ſhall hold it charged or not. *Quære.* 9. *E.* 4. 18. Br. *Charge.* 16. & 29. & Br. *Eſtates.* 25. See *Dyer. fo.* 141. *pl.* 44.

A Diſſeiſor grants a Rent Charge, the Diſſeiſee confirmes the Grant, and after enters upon the Diſſeiſor, whether the Charge be avoided or not *Quære.* See *Title Confirmation* 2.

Charter of Pardon.

WHether a Pardon of the King of Felony, Homicide, &c. doth pardon Murder or not. *Quære*, See my *Rep. pa.* 213. *pl.* 250.

Clergie.

WHether a Baſtard may have his Clergie or not. *Quære.* 11. *H.* 4. 8 Br. *Baſtardy*, 46. & Br. *Clergie* 22.

Whether a man *raptus oculis*, ſhall have his Clergie or not. *Quære.* Br. *Clergie* 21.

Commoner and Common.

WHether a man may borrow anothers Beaſts, to take Seiſin of Common, ſo that he chaſe them out preſently, or not. *Quære.* 45. *E.* 3. 25. Br. *Commoner, &c.* 5. 22. *Aſſ.*

Aſſ. pl. 84. *Br. Commoner, &c.* 40. *& Br. Title ſeiſin,* 5. *&* 36.

Conditions.

A Man Covenants that his eldeſt Sonne ſhall marry the Daughter of another by ſuch a day, and he dies before the day, whether the ſecond Sonne that now is may perform the condition or not. *Quere.* 27. *H.* 8. 14. 15. Br. *Conditions* 7.

Whether a releaſe of a right, &c. upon a condition ſubſequent, be good or not. *Quere.* 21. *H.* 7. 24. Br. *Cond.* 84. 17. *Aſſ. pl.* 2. Br. *Cond.* 103. 31. *Aſſ. pl.* 32. Br. *Cond.* 115. *Cooke* upon *Littleton, fo.* 274. *b.* 43. *Aſſ. pl.* 12. Br. *Releaſes* 39.

A man is bound to infeoffe a woman by a day, and before the day he himſelfe marries the woman, he may make a Leaſe for a moneth to a ſtranger, the remainder to his wife, and this is a good performance of the con-

dition, by *Fisher tamen Quære.* 4. *H.* 7. 4. Br. *Feoffements of Lands* 38.

A man makes B. & *C.* his Executors, *pr viso* that B. shall not administer, whether this *proviso* be good or not. *Quære.* See *Title Executors* 4.

A man makes a gift in taile upon condition that the Donee shall not make a Lease for three lives, or twenty one yeares, according to the Statute of 32 *H.* 8. whether this be a good condition or not *Quære.* 10. *Rep. Coke* upon *Littleton, fo.* 223. *a. fo.* 39. 4, 33. *H.* 8. *Dyer. fo.* 48 49.

Lessee for yeares Covenants and grants to the Lessor, that if he, his Executors or Assignes, alien the terme, that it should be lawfull to the Lessor and his Heires to enter the Lessee makes his wife Executrix and dies who takes husband, and the husband aliens, whether the Grant and Covenant made of the part of the Lessee bee a Condition or not *Quære.* and whether the Condition be broken

broken by the alienation of the ſecond husband or not. *Quære.* 28. *H.* 8. *Dyer. fo.* 6. *pl.* 1. See *Dyer. fo.* 45. *pl.* 1. *and* 3.

A man makes a Leaſe for yeares, upon condition that if the Leſſee during his life, aſsignes his terme, that it ſhould be lawfull to the Leſſor to re-enter, the Leſſee deviſes it by his Teſtament, whether this be a breach of the Condition or not, *Quære.* 31. *H.* 8 *Dyer. fo.* 45. *pl.* 3.

Tenant in Taile makes a Feoffement upon condition to make back an Eſtate to him and his wife in taile, the remainder *T. M. Filio Meo, &c.* the remainder *Sibill. filiæ meæ*, the Feoffees make a Feoffement to the firſt Feoffer and his wife in taile, the remainder to *T. M. Filio meo*, the remainder *Sibill. filiæ meæ*, the Feoffor dies, and *T. M.* enters for Condition broken, 'twas holden that the Condition was broken, becauſe that *Sibill. Filiæ meæ* cannot be intended the Daughter of the firſt Feoffor, but whether the Condition be extinguiſhed, or onely

ſuſpended by the acceptance of the Feoffor, this is the queſtion, and of this *Quære.* 31. *H.* 8. *Dyer. fo.* 45. *pl.* 4. 5. *E.* 6. *Dyer. fo.* 69. *pl.* 36. See 8. *H.* 7. 7. Br. *Conditions* 134. 22. *E.* 4. 17. Br. *Conditions* 167.

Leſſee upon condition that he ſhall not do waſt, he ſuffers waſt, whether this be a breach of the Condition or not. *Quære.* 10. and 11. of the Queen, *Dyer. fo.* 281. *pl.* 21.

Gavelkinde Land is deviſed to the eldeſt Sonne, upon condition that he ſhall pay 100 *l.* to the wife of the Deviſor, he failes of payment, whether the younger Sonne may enter in the moity as by an implied limitation or not. *Quære.* 14. & 15. of the Queene *Dyer. fo.* 316. *pl.* 5. See the 3. *Rep. fol.* 21. *a.* Boraſton's Caſe.

A man grants a Rent *de novo* in Fee, upon condition that the Grantee ſhall not alien, whether this be a good condition or not. *Quære.* Cooke upon *Littleton, fo.* 223. *a.* See 2. *Rep. fo.* 70. 76. & 78.

Confir-

Confirmation.

BAron and Feme Donees in ſpeciall Taile, the Baron leavies a Fine, and dies, he in reverſion confirmes to the wife her Eſtate, to have to her and to her Heires of her body by the husband ingendred, what is wrought by this Confirmation. *Quære.* 9 *Rep. Beaumonts Caſe.* See my *Rep. pa.* 146. *pl.* 216.

Copy hold.

THe King grants a Copy-hold for life Generally, whether this deſtroyes the Copy-hold or not. *Quære.* my *Rep. pa* 206. *pl.* 246.

Corone, &c.

A Man bailes goods to another to keepe, and after the owner that bailed them, takes them againe felo-

niously, whether this be Felony or not. *Quære.* 7. *H.* 6. 42. Br. *Corone* 45. 5. *H.* 7. 18. Br. *Corone* 142. 29. *H.* 6. Br. *Corone*, 216. 13. *E.* 4. 9. Br *Corone* 160.

Whether a man may feloniously steale goods in his owne custody or not. *Quære.* 21. *H.* 7. 14. Br. *Corone* 58. 12. *Ass. pl.* 32. Br. *Corone* 76. 3. *H.* 7. 12. Br. *Corone* 137. 13. *E.* 4. 9. Br. *Corone* 160. See *Dyer fo.* 5. *pl.* 2. and See now the Statutes of 21. *H.* 8. *cap.* 7. and 5. of the Queene, *cap.* 10. by which 'tis made Felony for a Servant to steale goods in his custody to the value of 40 *s.* &c.

A man delivers an Obligation to his Servant to receive 20 *l.* of the Obligor, and the Servant receives it, and after runs away, &c. whether this shall be Felony within the Statutes of 21. *H.* 8. and 5 of the Queene before cited or not. *Quære.* Because that the money was not delivered to him by his Master, as the Statutes speake. 25. *H.* 8. *Dyer. fo.* 5. *pl.* 2.

Three

Three men are appealed in Felony, two as principals, and the third as acceſſary, one of the principals is attainted, and the other not, whether the acceſſary may be arraigned before the Attainder of the other or not. *Quære. Keilway Caſus incerti temporis. fo.* 107. *pl.* 23.

Corporations.

WHether a Corporation may retaine a Servant without Deed or not? and what Acts they may do without Deed, what not? *Quære.* 14. *H.* 8. 2. 29. *Br. Corporations* 34. 4. *H.* 7. 17. *Br. Corpor.* 49. 4. *H.* 7. 6. *Br. Corpor.* 47. 7. *H.* 7. 9. Br. *Corpor.* 50. 12. *H.* 7. 25. 26. Br. *Corpor.* 51. 12. *E.* 4. 9. 10. Br. *Corpor.* 56. 18. *E.* 4. 8. Br. *Corpor.* 59. 21. *E.* 4. 76. Br. *Corpor.* 66. 18. *E.* 4. 8. Br. *Corpor.* 73. 13. *H.* 8. 12. Br. *Corpor.* 83. *Pl. Com.* 91. 92. 4. *Rep.* 119. 6. *Rep.* 38. 10. *Rep.* 67. 11. *Rep.* 79. *Dyer. fo.* 102. *pl.* 83.

The

The King grants a Manour *hominibus de I. hæredibus & successoribus suis*, rendring Rent, whether this doth make them a Corporation or not; *Quære*. And *quære* if it had been without rendring any rent: See *Tit. Grants of the King* 1.

Covenant.

A Man Covenants for himselfe, not naming his Executors, whether this shall binde his Executors or not. *Quære*. See *Title Executors* 2.

A. Covenants with *B.* to infeoffe him of the Mannour of *D.* before Easter, discharged of all former incumbrances, but Leases of which the antient Rent is reserved, after, and before the Feoffement, he makes new Leases rendring the antient Rent, whether this be a breach of the Covenant or not. *Quære* 3. & 4. *P. & M. Dyer. fo.* 139. *pl.* 34.

A man upon Covenants of Marriage, covenanteth that immediately after his deceaſe, the Land ſhall inure and remaine to his Sonne, and whether this Covenant doth raiſe a uſe to the Sonne or not. *Quære.* See *Title Uſes* 1.

Countermand.

A Feme ſole commands *I* to make an Obligation in her name, and to deliver it as her Deed, and before the execution of it ſhe takes husband, and after 'tis executed, by ſome this ſhall binde her, becauſe ſhe had power *tempore mandati*. *Quære*. whether it be not countermanded by the intermarriage, 14. *E.* 4. 2. *Br. Coverture, &c.* 90. 27. *H.* 6. 7. *Br. Relation* 1. 3. *Rep. fo.* 35. *b.* 4. *Rep. fo.* 60. *&* 61. *Perkins* 140. 141.

Whether a Diſſeiſin ſhall countermand a deviſe or not. *Quære.* 39 *H.* 6. 8. *Br. Deviſe* 15.

A Feme sole Licenses a man to hunt in her Warren, and after takes husband, whether by the inter-marriage the License be countermanded or not. *Quære* 22. *H.* 6. *fo.* 52. *Br. Licenses, &c.* 6. 3. *H.* 8. *Keilway, fo.* 163. *a.* 4. *Rep. fo.* 60. *&* 61.

A Lease at will is made to a Feme sole who takes husband, whether by this the Lease be determined or not. *Quære.* 3. *H.* 8. *Keilway fo.* 162. *pl.* 4.

Court Baron, County Court, and Hundred.

A Man brings debt upon a Recovery in Court Baron, whether the Defendant may plead *nul tiel Record*, or not, or whether he ought to say, *nul tiel Recovery. Quære. Br. Court Baron, &c.* 1. 34. *H.* 6. 42. *Br. Court Baron* 14. 9. *E.* 4. 14. *Br. Court Baron* 16. See my *Reports, pa.* 15. *pl.* 35.

Upon a Recovery in debt in a Court Baron, the Baily cannot sell the Goods of the Defendant taken in execution

cution, except by cuſtome, and whether he ought to keepe them as a diſtreſſe till the plaintiffe be ſatisfied of his Debt, or whether he may deliver them to the Plaintiffe in execution or not *Quære.* 22. *Aſſ. pl.* 27. *Br. Court Baron, &c.* 7. 38. *E.* 3. 3. *Br Court Baron* 5. 4. *H.* 6. 17. *Br. Court Baron* 6. 1. *E.* 4. 10 *Br. Court Baron* 10.

A man brought Debt upon a Recovery in antient Demeaſne, which is a Court Baron, whether the Defendant might wage his Law or not. *Quare.* See *Br. Title wager of Law* 10.

Whether a Hundred may be parcell of a Mannour or not. *Quære.* 27. *H.* 6. 2. *Br. Parcell &c.* 2. *& Br. ſcire facias* 7. See *Keilway, fo.* 151. *pl.* 51.

Cuſtomes.

BY the Cuſtome of *London* a man cannot wage his Law for bourding, but notwithſtanding in Debt brought at *Weſtminſter*, the better opinion

niou seems to be, that there he shall have his Law, because that such customes are allowable onely in the places where they do arise. *Lamin Quere* 1, E. 4. 5. *Br. Customes* 43.

The Inhabitants of a Parish have a Chappell of Ease, and a Custome that those within such a Precinct ought to finde a Rope for the third Bell, and to repaire part of the Mother Church, in consideration of which they have been freed from payment of any Tithes to the Mother Church, whether this be a good Custome or not. *Quære.* See my *Reports*, *pa.* 91. *pl.* 151.

Damages.

WHether in Detinue for divers severall things, the Jury may give Damages in grosse, or whether they ought to give them severall or not. *Quere.* 1. *h.* 5. 5. *Br. Dam.* 141. 1. *Ri* 3. *fo.* 1. 3. *H.* 6 43. *Br. Detinue of Goods* 4. & 48.

A man diſtraines for a penalty aſſeſſed by Cuſtome, and diſtrainable by Cuſtome, and upon a Replevin brought, Judgement was given for the Avowant, and Damages aſſeſſed, and whether Damages ought to have been given or not. *Quære.* See my Reports, *pa.* 38. *pl.* 64.

Darreine Preſentment.

A Man ſeized of a Manour with an Advowſon appendant in right of his wife, preſents, and after hath iſſue, and the wife dies, the Church becomes void, and he preſents and is diſturbed, whether he ſhall have an Aſsize of Darreine Preſentment or not. *Quære. Keilway Caſus incerti temporis, fo.* 118. *b. pl.* 61.

Debt.

WHether the Heire of the Heire, or the Executors of the Heire ſhall be charged in debt upon an Obligation

ligation made by the Anceſtor or not. *Quære. Pl. Com. fo.* 441. *a.*

A man is bound to ſtand to the Arbitrement of *I. N.* who arbitrates that he ſhal pay 10*l.* whether the Obligee ſhall have Debt upon the Obligation, and upon the Arbitrement alſo. *Quære.* 33. *H.* 6. 2. *B. Debt* 23.

In Debt upon a Leaſe for yeares, the Defendant ſaid that the Plaintiffe was bound to Reparations by Covenant and becauſe that the Tenements were ruinous, he commanded him to amend the Tenements with the Rent; the which he did, Judgement if Action, &c. and whether this be a good Plea or not. *Quære* 34. *H.* 6. 17. *Br. Debt* 27. 14. *H.* 4. 27. *Br. Debt* 72. [illegible] *H.* 8. 1. *Br. Debt* 226.

Whether [illegible]ot lyes upon a Fine or an Amerciament in a Leete or not *Quære* 7 *H.* 6. 12. *B. Debt* 85. 9 *E.* 4. 40. *Br. Debt* 114. 10. *H.* 6. 7. *Br. Debt* 180. 11. *H.* 7. 13. *B. Debt* 2, 0.

A man promiſes 20 l. in Marriage with his Daughter, whether debt lies for it or not. *Quære.* 22. *Aſſ.* pl. 70. *Br. Debt* 135. 14. E. 4. 6. *Br. Debt* 161: 17. E. 4. 4. *Br. Debt* 162. 15. E. 4. 32. *Br. Debt* 105.

Deeds Inrolled.

WHether a Deed inrolled ſhall be avoided by Dureſſe or not. *Quære.* 21. E. 3. 43. *Br. Faitz Inroll* 3. 19. H. 6. 6. *Br. Faitz Inroll* 4. 7. E. 4. 5. *Br. Faitz Inroll* 11. 16. H. 7. 5. *Br. Faitz Inroll* 17.

Demands and demandable.

THe Mannour of B. extends into B. and D. and is demanded *per nomen manerii* in B. whether he ſhall recover onely that which is in B. or not. *Quære.* 9. E. 4. 17. Br. *Demand* 50.

Grantee of a Rent to be paid at the houſe, and if the Rent be behinde,

and lawfully demanded at the House, then to be lawfull for the Grantee to distraine, whether a distresse upon the Land in such case be a sufficient demand or not. *Quære.* See my *Rep. pa.* 147 *pl.* 218.

Dennizen and Alien.

AN Englishman goes beyond the Sea, and marries a Feme alien, whether this makes her of the Allegiance of the King and her Issue inheritable or not. *Quære.* Br. *Denizen and Alien* 21. See my Reports *pa.* 91. *pl.* 130.

Detinue of Goods.

A man findes Goods, and delivers them over before Action brought, whether this shall excuse him in an Action of Detinue brought against him for the Goods or not. *Quære.* 27 *H.* 8. 13. Br. *Detinue of Goods*, 1. 39. *H.* 6. 2. Br *Detinue &c.* 33. 12. E. 4. 8. Br. *Detinue, &c.* 10.

Whether

Whether Detinue for Beasts taken in Withernam lyes or not. *Quære.* 11. *H.* 4 10. Br. Detinue of Goods 18.

Disclaimer.

IN an Avowry against a Baron and Feme, whether the Baron and Feme may disclaime or not. *Quære.* 35. *H.* 6. 10. *br. Disclaimer* 6. 43. *E.* 3. 5. *Br. Disclaimer* 8. 10. *E.* 4. 2. *br. Desclaimer* 27. 4. *H.* 5. *Br. Disclaimer* 36. 14. *H.* 4. 18. *Br. Disclaimer* 38. 21. *H.* 7. 20. *Br. Disclaimer* 43. 9. *H.* 6. 52. *Br. Disclaimer* 44. 14. *H.* 4 18. *Br. Disclaimer* 46. 30. *Ass. pl.* 10. Br. *Disclaimer* 50.

A man avowes, and the Plaintiffe acknowledges the Avowry, whether in another Avowry he may disclaime or not. *Quære.* 2. *E.* 4. 16. *Br. Disclaimer* 23.

Whether the Demandant may enter upon the Disclaimer of the Tenant or not. *Quære.* 4. *E.* 4. 38. Br. *Disclaimer* 24. 5. *E.* 4. 1. Br. *Disclaimer* 25.

Lord Mesne and Tenant, the Mesne cannot disclaime in an Avowry, for he cannot lose the Land of the Tenant; but whether they may joyne in Disclaimer or not. *Quære.* 12. E. 4. 16. *Er. Disclaimer* 30. 9 H. 6. 27. Br. *Disclaimer* 1. 21 E. 4. 47. Br. *Disclaimer* 31. 12. E. 4. 13. Br. *Disclaimer* 28. 13. E. 4. 6. Br. *Disclaimer* 42.

Discontinuance.

GRandfather, Father, and Sonne, the Grandfather Tenant in Taile makes a Lease to another for his life, and dies, the Father grants the reversion in Fee, the Tenant for life Attournes, and dies, the Grantee enters, and after the Father dies, whether this be a discontinuance to the Sonne or not *Quære. Keilway, fo.* 120. *pl.* 68. *Cooke* upon *Littleton, fo.* 333. See *Dyer fo.* 98. *pl.* 55. and *Littleton, Sect.* 637, 638.

Tenant in taile makes a Lease *pur auter vie*, the remainder to the Donee in Fee. whether this be a Discontinuance

nuance in Fee or not. *Quære.* 28. *H.* 8. *Dyer. fo.* 8. *pl.* 15 & *fo.* 9. *pl.* 121.

Diſpenſation.

A Man makes a Feoffement upon condition of re-infeoffement, whether acceptance of another Eſtate than is contained in the Condition, ſhall be a diſpenſation of the breach of the condition or not. *Quære.* See *Title Conditions.*

Diſſeiſor and Diſſeiſin.

A Man enters upon the Poſſeſſion of the King, whether this ſhall be a diſſeiſin to the Tenant of the Freehold or not. *Quære.* 31. *Aſſ. pl.* 1. *Br. Diſſeiſor & Diſſeiſin* 55. 2. *H.* 4. 7. *Br. Diſſeiſor & Diſſeiſin* 4.

A Diſſeiſee leavies a Fine to a ſtranger, whether this gives the right to the Diſſeiſor or not. *Quære.* See Title *Fines of Lands.* 2.

Distresse.

WHether a man upon a returne irreplegiable, may worke the distresse or not. *Quære.* 10. & 11. of the Queene *Dyer, fo.* 280. *pl.* 14.

Grantee of a Rent Charge in Fee, distraines for Arrearages, and then grants it over, whether the Arrearages are lost or not. *Quære.* See *Title Arrearages.*

Distribution.

WHether the Ordinary, after Debts and Legacies paid, may inforce a Distribution of the residue of the Estate or not. *Quære.* See my *Rep. pa.* 65. *pl.* 162. & *pa.* 93. *pl.* 158. and see *Hobarts Reports.*

Dowp.

Dower.

A Man makes a Leaſe for yeares rendring Rent, and after takes wife and dies, whether ſhe ſhall be indowed of the Rent as well as of the reverſion, or not. *Quære.* 1. E 6 *Br. Dower* 89 *Perkins fo.* 69. *pl.* 348. and *Cooke* upon *Littleton, fo.* 32. *a.*

Whether a Writ of Dower lies againſt the Committee of a Ward of the King and whether Aſsignement of Dower be good by him or not. *Quære. Keilway, fo.* 138. *pl.* 112.

Dureſſe and Manaſſe.

WHether a Deed inrolled ſhall be avoided by Dureſſe or not. *Quære.* See *Title Deeds inrolled.*

A man makes a Writing by Dureſſe or Manaſſe, and after he being at large, a Defeaſance is made by Deed

indented betwixt the Obligor and Obligee, whether this ſhall eſtoppe the Obligor to ſay that it was made by Dureſſe, &c. or not. *Quare.* See *Title Eſtoppell.*

Embaſement of Monies.

WHere Monies ſhall be paid in ſilver imbaſed, and who ſhall beare the loſſe of it, and who not. *Quere.* And ſee Title Monies, and Embaſement of them, *per tot.*

Emblements.

BAron and Feme Joyntenants, the Baron ſowes the Land with Corn and dies, whether the Feme or the Executors of the husband ſhall have the Corne. *Quere.* 8. *Aſſ. pl.* 21. *Br. Emblements* 15. 8. *F.* 3. 54. *Dyer. fo.* 316. *pl.* 2, *Cooke* upon *Littleton, fo.* 55. *b.*

Entry

Entry lawfull.

AN Infant aſsignes Dower to his mother, more than the third part, whether he may enter into the ſurpluſage at his full age or not, or whether he is put to his Writ of Admeaſurement of Dower or not. *Quære. 21. H. 7. 29. Br. Entre congeable, 44. and Admeaſurement, &c. 4.*

A Man grants a Seigniory for life, the Tenancy eſcheates, a ſtranger enters and dies ſeized, Tenant for life dies, whether the entry of the Lord be taken away, or not. *Quære. Keilway, Caſus incerti temporis, fo.* 114. *pl.* 50.

Tenant for life, the remainder for life, the remainder in fee, Tenant for life makes a Feoffement in Fee, whether he in the remainder for life may enter for the forfeiture or not. *Quære.* See Title forfeiture of Lands.

Enfran-

Enfranchiſement.

A Niſe marries a Freeman, whether by this ſhe be infranchiſed for ever, or for life onely. *Quære.* And if the Lord marries his Nieſe, whether this be an Infranchiſement for ever or not. *Quære. Cooke* upon *Littleton, fo.* 123. *a. & fo.* 136. *b. &* 137. *b. F. N. B.* 78. *b.* 30. *E.* 1. *Title Villein* 46. 33. *E.* 3. *ibid.* 21. *Doct. & Stud. fo.* 140. *a.* 18. *E.* 2. *ibi.* 30. 46. *E.* 3. 4. 4. *E.* 4. 25. 1. *H.* 4. 6. 13. *E.* 1. *Villen.* 36. 18. *Aſſ.* 10. *Mirror* 10. 2. *Sect.* 18.

Error.

A Man recovers by Judgement erronious, and dies without Heire, what remedy. *Quære.* 9. *H.* 6. 46. *Br. Error.* 9.

Error brought in the Kings Bench upon a Judgement given in an Aſsize one of the Plaintiffs in the Writ of Error

Error, dies pending the Writ, and notwithstanding Judgement was reversed, upon which the Recoverers in the first Action brought Error in the Kings Bench, and whether this Error lyes upon a Judgement given in the same Court or not. *Quære.* 2. *R.* 3. 1. *a. and* 20. *b.* 7. *H.* 6. 28. *Dyer. fo.* 196. *pl.* 39. *Br. Error* 68. 15. *H.* 4. 7. *Br. Error* 81. 4 E. 4. 41. *Br. Error.* 158. *Dyer. fo.* 139 *pl.* 35.

Whether a Writ of Error lyes in an *Ejectione firmæ*. before Judgement given upon the Writ of enquiry, or not. *Quære.* See my Reports, *p.* 88. *pl.* 142.

Escape.

IF a man who is in Execution be let at large by Commandment of the King, Treasurer, or Chancellor or by License of the Chiefe Justice, whether this be an Escape or not. *Quære.* 4. & 5. *P. & M. Dyer fo.* 162. *pl.* 30. 10. of the Queene *Dyer fo.* 275. *pl.* 46.

46. 12. & 13. of the Queene *Dyer. fr* 279. *pl.* 24. *Keilway, fo.* 214. *a.* and many other Bookes. See Br. *Eſcape.*

Eſcheate.

A Tenant is diſſeiſed, and dies without Heire, whether the Lord may have a Writ of Eſcheate or not, becauſe that the Tenant died not ſeized. *Quere.* Or whether he may enter or not. *Quere.* 2. *H.* 4. 8. Br. *Eſcheate*, 4. 7. *H.* 4. 17. Br. *Eſcheate* 5. 4 *H.* 6. 29. Br. *Eſcheate* 10. 37. *H.* 6. 1. Br. *Eſcheate* 11. 6. *H.* 7. 9. Br. *Eſcheate* 16. & 22. 32. *H.* 6. 27. Br. *Eſcheate* 26. *F. N. B.* 144. *C. Keilway, fo.* 114. *a.* See the 3. *Rep. fo.* 2. & 3.

Eſtates.

A Man recovers a Rent by a Writ of Entry againſt Tenant in taile of a Rent, which had not being before the Grant made in taile, whether the Recoveror hath a Fee ſimple

ſimple or not. *Quere.* 15. E. 4. 6. & 8. See 37. H. 6. 36. & *Com.* 557. *a.* See *Title Rents* 2.

Eſtoppell.

A Man makes a writing by Dureſſe or Manaſſe, and after he being at large, a defeaſance is made by Deed, indented betwixt the Obligor and the Obligee, whether this ſhall eſtoppe the Obligor to ſay that it was made by Dureſſe, &c. or not. *Quere.* 35. H. 6. 18. *Br. Defeaſance* 17. and *Eſtoppell* 21. And the Queſtion is no other, but whether the recitall of the obligation by the Deed indented of defeaſance, ſhall be an Eſtoppell or not, and for this, ſee 9. H. 6. 8. 9. *Br. Eſtoppell*, 5 35. H. 6. 33. Br. *Eſtoppell* 23. 46. E. 3. 12. & 13. *Br. Eſtoppell* 43. 49. E. 3. 14. 15. *Br. Eſtoppell* 49. 18. *Aſſ.* pl. 3. *Br. Eſtoppell* 127. 9. H. 7. 2. 21. 2. 4. 52. 53. Br. *Eſtoppell*, 173. See *Cooke* upon *Littleton*, *fo.* 352. *b.*

Execu-

Executors.

WHether Executors shall have the Glasse of windowes or not. *Quære.* 21. *H.* 7. 26. *Br. Chattels* &c. 7.

A Man Covenants for him, not naming his Executors, whether this shall binde his Executors or not. *Quære.* 32. *H.* 6. 32. *Br. Covenant* 28. 10. *H.* 7. 18. *Br. Covenant* 50. See *Dyer. fo.* 14. *pl.* 69 *fo.* 114. *pl.* 60. & *fo.* 322. *pl.* 25. See *Cooke* upon *Littleton, fo.* 209. *a.*

Whether he which is barred in Debt against an Executor upon a fully administred found against him, shall have a new Writ of Debt upon Assets come after or not *Quære.* 4 *H.* 6. 4. *Br. Debt,* 106. & *Executors* 85. 19 *H.* 6. 36. 37. *Br. Executors* 70. 33. *H.* 6. 23. & 24. *Br. Executors* 18. 34. *H.* 6. 21 & 23. *Br. Executors* 22. See the 8. *Rep. fo.* 133. *a. b.*

A man makes *B.* and *C.* his Executors, proviſo that *B.* ſhall not adminiſter, whether this proviſo be good or not. *Quære.* 19. *H.* 8. 3. *Br. Executor* 2. 3. *H.* 6. 67. *Br. Executor.* 9. *Dyer. fo.* 3. *pl.* 7. 32. *H.* 8. *Br. Executor* 155.

The goods of the Teſtator are taken out of the poſſeſsion of the Executors, whether they ought to joyne or ſever in Action. *Quære.* 42. *E.* 3. 26. *Br. Executors* 31. 2. *H.* 7. 15. 6. *H.* 7. 6, *Br. Executors* 170. 24. *E.* 3. 35. *Br. Executors.* 84.

An Executor grants *omnia bona & catalla ſua*, whether this paſſes the goods of the Teſtator or not. *Quære.* See *Title Grants.* 1.

Whether Executors ſhall be charged as Executors in Detinue brought againſt them upon a baylement made to their Teſtator or not. *Quære, Keilway, fo.* 118. *pl.* 62. 3. *H.* 6. 35. *Br. Executors* 10. 41. *E.* 3. 30. 31. *Br. Executors* 28. 39. *E.* 3. 5. *Br. Executors* 92. See the 9. *Rep. fo.* 94.

Admi-

Administration is committed to an Executor *de son tort*, whether he shall be charged as Executor, or as Administrator. *Quere. Keilway, fo.* 127. *pl.* 91. 9. E. 4. 33. 47. Br. *Executors* 90.

Whether Debt lyes against an Executor of an Administrator, or not. *Quere.* 32. *H.* 8. *Dyer. fo.* 47. *pl.* 12. 34. *H.* 6. 14. Br. *Administration.* 7. 24. E. 3. 54. Br. *Executors* 83. See 1 & 2. *P.* & *M. Dyer, fo.* 112. *pl.* 51. & 4. & 5. *P.* & *M. Dyer. fo.* 160. *pl.* 42. 1. & 2. of the Queene *Dyer. fo.* 174. *pl.* 21.

Whether the Executors of the Heire shall be charged in Debt upon an Obligation made by the Ancestor or not. *Quere.* See Title Heire 1.

Whether the Executor of a Phillizer shall have the profits of the Writs which are to be subscribed with his name, or his Successor. *Quere.* See my Reports *pa.* 90. *pl.* 147.

Extin-

WHether unity of poſſeſsion ſhall extinguiſh a way or paſſage or not, *Quære.* 3. *H.* 6. 31. *Br. Chymin.* 13. 11. *H.* 4. 5. *Br. Extinguiſhment &c.* 11. 21. *E.* 3. 2. Br. *Extinguiſhment* 15. See 11. *H.* 7. 25 Br. *Extinguiſhment* 60. *Hobarts Reports, pa.* 171. *pl.* 170. *Dyer, fo.* 295. *pl.* 19.

A man Obligor marries with the Obligee, and after they are divorced, whether the Obligation be revived or not. *Quære.* 26. *H.* 8. 7. *Br. Coverture, &c.* 82. and *Extinguiſhment* 1. *Dyer, fo.* 13. *a.* 11. *H.* 7. 4. *b.* Br. *Deraignement & Divorce* 1. & 18. *Hobarts Reports pa.* 14. *pl.* 19. 8. *Rep. fo.* 136.. *a. Cooke* upon *Littleton, fo.* 264. 6. *Dyer, fo.* 140. *a. Pl. Com. fo.* 184. *Keilway, fo.* 122. *b.* 21. *H.* 7. 23. See *Br. Aſſets* by Diſcent. 1.

Land of *B.* out of which Rent is iſſuing, is given to another by Act of Parliament, whether the Rent be by this extinguiſhed or not. *Quære.* 21.

H. 7. 3. Br. *Parliament, &c.* 28.

A Feme sole makes a Lease for yeares, the Lessee commits waste, and after the Lessor and the Lessee intermary, and after are divorced, whether the action of waste be revived againe or not. *Quære. Keilway, fo.* 122. *pl.* 75. See *supra, pl.* 2.

Where a Condition shall be extinguished, and where onely suspended. See *Title Conditions* 9.

Feoffements of Lands.

A Feoffment made by one joyntenant to his Compagnion, shall inure by way of confirmation by *Newton. Quære.* 22. *H.* 6. 42. 43. Br. *Confirmation* 11. See Br. *Feoffements, &c. ult.*

A man makes a Feoffement of the Mannour of *D.* in *D. cum pertinentiis*, whether the Mannour of *D.* extending into *D.* and *S.* or nothing but that which

which is in *D.* onely, or whether all the Mannour shall passe or not. *Quere.* 7. *H.* 4. 27. Br. *Feoffements of Lands*, 55. 9. *E.* 4. 6. & 17. Br. *Feoffements, &c.* 59.

Whether a man *surdus & mutus* may make a Feoffement or not. *Quære.* 34. & 35. *H.* 8. *Dyer, fo.* 55. *pl.* 12. *Cooke* upon *Littleton, fo.* 42. *b. Perkins Title Grants pl.* 25. 2. *H.* 4. 8. Br. *Feoffements &c.* 7.

Fines leavied of Lands.

WHether by a Grant of conusance of Pleas and of executions thereupon, a man may leavie Fines or not. *Quære.* 44. *E.* 3. 38. Br. *Fines, &c.* 22.

A Disseisee levies a Fine to a stranger, whether this gives the right to the Disseisor or not. *Quære.* 2. *Rep. fo.* 56. *a.* 3. *Rep. fo.* 90. *a. b.* 6. *Rep. fo.* 70. *a.* See my Reports, *pa.* 105. *pl.* 180.

Tenant for life, the reverſion to an Ideot, an Uncle Heire apparent to the Ideot, leavies a Fine and dies, Tenant for life dies, the Ideot dies, whether the Iſſue of the Uncle who leavied the Fine, ſhall be barred by it, or not, *Quære.* See my *Reports, pa.* 94. *pl.* 164 *& pa.* 146. *pl.* 216.

Forfeiture of Lands, and Goods, and Offices.

WHether an Attachment in a Court Baron be forfeited by non appearance of the party or not. *Quære.* 28. *H.* 6. 9. Br. *Attachment, &c.* 2. 34. *H.* 6. 49. Br. *Attachment, &c.* 19.

Whether a Gardein of a Priſon ſhall forfeit his Office by an Eſcape in the night or not. *Quære.* 5. *E.* 4. 26. Br. *Forfeiture, &c.* 54.

Tenant for life, the remainder for life the remainder in Fee, Tenant for life makes a Feoffement in Fee, whether he in the remainder for life may

may enter for the forfeiture or not. *Quære. Cooke* upon *Littleton, fo.* 252. *a. Dyer, fo.* 339. *pl.* 44. 29. *Ass. pl.* 64. 40. & 45. & 50. *Ass.* See *Littleton, sect.* 416. & 1. *Rep. fo.* 76. *a, b.*

Gardian in Socage.

TEnant in Socage deviſes by his will, the cuſtodie of his Heire apparent within age to *B.* whether this ſhall barre the Gardian in Socage or not. *Quære. Keilway, fol.* 186. *pl.* 1.

Grants of Common perſons.

AN Executor grants *omnia bona & catalla ſua*, whether this ſhall paſſe the goods of the Teſtator or not. *Quære.* 10. E. 4. 1. Br. *Grants* 96. 46. E. 3. 18. Br. *Grants* 21. 24. E. 3. 35. Br. *Executors* 84. See my Reports, *fa.* 205.

An Abbot hath an Advowſon appropriate, which hath a Vicarage endowed, and grants the Church and Advowſon, whether by this the Advowſon of the Vicarage, ſhall paſſe or not. *Quære.* 16. *E.* 3. *Br. Judgements* 138. See 40. *E.* 3. 28. *Br. Juriſdiction* 5. and *Juris utrum* 2.

A man grants *omnia bona & catalla ſua*, whether by this an Obligation ſhall paſſe or not. *Quære.* 25. *H.* 8. *Dyer, fo.* 5. *pl.* 3. 36. 37. *H.* 8. *fo.* 59. *pl.* 15. 21. *H.* 6. *fo.* 30. 8. *Rep. fo.* 33. *a. b.* 4. *E.* 6. *Br. Grants* 51. 39. *H.* 6. 35. *Br. Grants* 62. 4. *H.* 7. 10. *Br. Grants* 84.

Grants of the King.

THe King grants a Mannour *hominibus de ſ. beredibus & ſucceſſoribus ſuis*, rendring Rent. *Quære.* whether this ſhall make them a Corporation or not; and *Quære*, if it were without rendring Rent. 21. *E.* 4. 55. 56. *Br. Corporations, &c.* 65. 2. *H.* 7. 13. *Br. Patents* 44. 7. *E.* 4. 38. *Br. Patents* 62. 7. *E.* 4.

E. 4. 14. *Br. Pattents* 85. *Dyer. fo.* 100. *pl.* 70.

The King grants an Eſcheate *cum acciderit*, whether the Grant be good or not. *Quere.* 1. & 2. *P. & M. Dyer. fo.* 108. *pl.* 30.

The King grants a Copy-hold for life generally, whether this deſtroyes the Copy-hold, or not. *Quere.* See my Reports, *pa.* 226. *pl.* 246.

Heire.

WHether the Heire of the Heire, or the Executors of the Heire, ſhall be charged in Debt upon an Obligation made by the Anceſtor or not. *Quere. Pl. Com. fo.* 441. *a.* 22. of the Queene *Dyer, fo.* 368. *pl.* 46.

Incertainty.

A Man Diſtraines by two Horſes, the one worth 10 *l.* the other 40 *s.* and avowes the one for one Rent day, the other for another, not making mention which for the one, nor which for the other, and the one is found for him the other againſt him, of which horſe he ſhall have a retourne. *Quære.* 2. *H.* 6. *fo.* 3. *a.* See 2. *H.* 6. 17. Br. *Retourne de avers* 1.

Inſtance and Inſtant.

A Copie-holder for life Heriotable, the Lord grants the Seigniory for 99. yeares, if the Tenant ſhould live ſo long, the Tenant dies, whether the Grantee for 99. yeares ſhall have the Heriot by force of this inſtant any title, or not. *Quære.* See my Reports, *pt.* 23. *pl.* 52.

Joynder

Joynder in Action.

The Goods of the Teſtator are taken out of the poſſeſsion of the Executors, whether they ought to joyne or ſever in action. *Quere.* 42. E. 3. 26. Br. *Executors* 31. 2. *H.* 7. 15. 6. *H.* 7. 6. Br. *Executors* 170.

A promiſe is made to a Baron of a Feme Executrix, in that Right as Executrix, whether they may joyne in action or not. *Quere.* See my Reports, *pa.* 72. *pl.* 110.

Joyntenants, &c.

IT is enacted by Parliament, That all Eſtates made to *I. N.* ſhall be void; an Eſtate is made to *I. N.* and his wife, whether this ſhall be void the wife ſurviving or not. *Quere.* 5. *H.* 7. 30. Br. *Joyntenants, &c.* 67.

Two

Two Joyntenants for life, the one makes a Leaſe for yeares, to commence after his death, and dies, whether this ſhall binde the Survivor or not. *Quere. Pl. Com. fo.* 263. *b. Cooke* upon *Littleton, fo.* 184. *b.* 185. *a Littleton, ſect.* 289. *Cooke* upon *Littleton, fo.* 186. *a. b.* See *Dyer, fo.* 69. *pl.* 30. *and* 279. *pl.* 7. *and* 187. *pl.* 5.

Two Joyntenants, the one grants a Rent to his compagnion in Fee, whether the Grant be good or not. *Quere. Kelway, fo.* 728. *pl.* 95.

A man poſſeſſed of a tearme for yeares, deviſed by his Teſtament, the terme to his two Sons equally, whether they be Joyntenants, or Tenants in Common. *Quere.* 28. *H.* 8. *Dyer. fo.* 25. *pl.* 158. See *Rateliffs Caſe*, 3. *Rep. fo.* 39. *b.*

An Obligation of 200 *l.* is made to two *ſolvend. eis ſc.* the one hundred pounds to one of them, and the other hundred pounds to the other, the one of the Obligees dies, and his Exe-

cutors

tors sue for the one hundrtd pounds, whether the intier 200 *l.* accrues to the Survivor or not. *Quære.* 18. of the Queene *Dyer, fo.* 347. *pl.* 20. See *fo.* 160. *b. pl.* 43.

Justification.

GRantee of a Rent Charge in Fee, distraines for Arrearages, and then grants it over, whether he ought to avow or justifie. *Quære.* my Reports, *pa.* 103. *pl.* 178.

King and Queene.

THe King grants Land to the Queene in Fee, whether this be a good Grant or not. *Quære.* the Book of Entries 97. 98. *Pl. Com. fo.* 206. *Staplertons Case.* See the Epistle to the 6 *Rep.* 3. *H.* 7. *cap.* 14. *ob.* 49. *E.* 40. *Br. Title novability.* See 34. *H.* 6. 34. *Pl. Com. fo.* 245. 247. 234. 35. *H.* 6. 38. *Ans.* 17. *E.* 3. *b.* 7. *H.* 7. 7. 18. *E.* 3. 13. 4. *Rep. Clarkes Case* 4. *Rep. Vernons Case,*

8. of

8. of the Queene *Dyer, fo.* 248. 4. *Rep.* 3. 6. (against *Br.* 6. E. 6. *Dower* 69.) 23. E. 3. 22. 1. E. 3. 4. 9. E. 3. 33.

The Queene an Infant makes a Feoffement in Fee, whether this be good or not. *Quære. Cooke* upon *Littleton, fo.* 3. *a.* 133. *a. b.* 131. *a.* 127. *a. and* 31. *b.* 26. *Ass. pl.* 54. 3. *H.* 6. 55. 11. *H.* 6. 32. *Pl. Com. fo.* 213. & 221. *F. N. B. fo.* 43. 15. E. 4. 16. 38. E. 3. 2. *Dyer, fo.* 203. 27. *Ass. pl.* 4. 5. *Rep. fo.* 27. 18. E. 4. 10. 21. E. 4. 13. 8. *Rep.* 173. 6. *Rep.* 74. 27. *H.* 8. 1. 17. E. 3. 17. *Stamfords* Pleas of the Crowne, 61. 3. *H.* 7. 14. 21. *H.* 7. 8. 5. *Rep. fo.* 56. *a.* 9. E. 3. 33. 3. *H.* 7. 14. *b.*

Lachesse.

If the King hath a presentation in any other Right then in the Right of the Crowne, whether Laps shall incurre against him, as against any other person or not. *Quære. Register, fo.* 31. *a. Br. presentments al Esglises* 156.

Leases.

Leaſes.

A man covenants that another ſhall have his Land for twenty yeares, whether this amounts to a Leaſe or not. *Quere.* 21. *H.* 7. 37. *Br. Covenant,* 26. *and Leaſe* 21. 37. *H.* 8. *&* 1. *E.* 6. *Br. Leaſe* 60. See *Dyer, fo.* 372. *b. pl.* 11. *& fo,* 150. *pl.* 83. See *Hobarts Reports, pa.* 48. *b.* 49. *a.*

A man makes a Leaſe for yeares rendring Rent to himſelfe during the Tearme, and dies, whether his Heire ſhall have debt for the Rent arere after or not. *Quare.* See Title Reſervation 1.

A Biſhop makes a Leaſe to two for yeares rendring Rent, after makes a new Leaſe with confirmation of the Deane and Chapter to one of them, and dies, whether by his death the firſt Leaſe be wholly void or not. *Quere.* 32. *H.* 8. *Dyer, fo.* 46. *pl.* 9.

A man

A man makes a Leaſe for yeares, upon condition that if the Leſſee aliens the terme, that then it ſhould be lawfull to the Leſſor, &c. to enter the Leſſee aliens the terme, the Leſſor before entry makes a Leaſe for yeares, whether the Leaſe be good or not. *Quære.* 28. *H.* 8. *Dyer, fo.* 6. *pl.* 1. *& fo.* 7. *pl.* 6. *Pl. Com. fo.* 131. 132. 133. *&c.*

Tenant in taile makes a Leaſe for yeares to commence after his death, rendring Rent, and diess the Iſſue accepts the Rent, whether this ſhall barre his entry or not. *Quære. Dyer. fo.* 279. *pl.* 7. *fo.* 69. *pl.* 130. *& fo.* 246. *a. pl.* 69. *Cooke* upon *Littleton, fo.* 44. *a. Pl. Com. fo.* 430. See *Dyer, fo.* 357. *pl.* 43. the like caſe.

Licenſe.

A Feme ſole Licenſes a man to hunt in her Warren, and after takes husband, whether by the intermarriage, the Licenſe be determined or

or not. *Quære.* 22. *H.* 6. 52. *Br. Licenses* 6.

A man licenses another to hunt and kill a Buck in his Parke, whether by force of this License he may take it away with him or not. *Quære.* 18. *E.* 4. 14. *Br. Licenses, &c.* 12. and 6. And *Quære*, whether he may kill it by his Servant or not. See 23. *H.* 8. *Br. Patents* 76. & 12. *H.* 7. 25. *Br. Property* 41. for the first case, and See 21. *H.* 7. 13. *Br. Trespasse*, 207. 13. *H.* 7. 10. *Br. Trespasse* 431.

Livery and Seisin.

A Man makes a Feoffement and a Letter of Attorney to make livery absolutely, and he makes livery upon condition, whether this livery be void or not. *Quære.* 12. *Ass. pl.* 24. *Br. Disseisor &c.* 33. *and Feoffements* 25. *Cooke* upon *Littleton, fo.* 250. *a. b. Perkins, fo.* 39. *pl.* 192. *Cooke* upon *Littleton, fo.* 52. *a. b.* 26. *Ass. pl.* 39. *Br. Feoffements* 27.

A

A man infeoffes two, and makes a Letter of Attorney to one of them to make Livery to the other in the name of both, and he doth it, whether he that makes the livery doth take any thing by it or not. *Quære.* 3. *H.* 6. 43. *Br. Attorney* 5. *Perkins*, *fol.* 41. *a.*

A man seized of a House and Close makes a Lease for years of the House; and after makes a Feoffement of the House and Close, and delivers Seisin in the House (the Wife and Infants of the Termor being in the House) in the name of all, agreed that the House shall not passe, but whether the Close being within the view, shall passe or not. *Quære.* 28. *H.* 8. *Dyer*, *fo.* 18. *pl.* 107. 108.

A Letter of Attorney is made to three to make livery, *conjunctim & divisim*, two make livery, the third being present, not doing or saying any thing, whether this be a good livery or not. *Quære.* 38. *H.* 8. *Dyer*, *fo.* 62. *pl.* 34.

Lessee

Leſſee for yeares makes a Feoffement, and a Letter of Attorney to make Livery, and after the Attorney delivers Seiſin, the Leſſor being preſent upon the Land, not contradicting, whether the Land paſſes by this Feoffement or not. *Quere. Dyer, fo.* 362. *pl.* 20. *&* 354. *pl.* 35.

Maintenance.

A Man buyes a Title thus, That if he can recover it, he ſhall pay two hundred pounds, otherwiſe nothing, whether this be maintenance puniſhable at the Common-Law or not. *Quere. Hobarts* Reports, *pa.* 157. *pl.* 141.

Monies, and embaſement of them.

A Man bound to pay money by ſpecialty, tenders the money at the day of payment, which is refuſed, and after the money is debaſed, who ſhall beare the loſſe of it *Quere.* 7. E. 6. *Dyer, fo.* 83. *pl.* 76. See before in *Dyer, pl.* 69. 70. 73, 74, 75. and *Davis Reports, fo.* 27, 28.

A man bequeatheth by his will money to another, after baſe money is eſtabliſhed, whether the Legacy may be paid in this baſe money or not. *Quere. Davis Reports, fo.* 27. *b.*

A man hath a thouſand pound pure ſilver in marriage with his wife, who after are divorſed *cauſa præ-contractus.* Or a man recovers by erronious judgement an hundred pound in debt, and hath execution in pure ſilver, after the judgement is reverſed, if baſe money be eſtabliſhed in the meane time; whether reſtitution in theſe caſes

cases may be of base money or not. *Quere. Davis Reports, fo. 27. b. 28. a.*

Mortmaine.

IF a Rent be granted to an Abbot and his Successors for eighty yeers; whether this be *Mortmaine* or not. *Quere, 4. H. 6. 9. Br. Mortmaine 15. Pl. Com. fo. 87. a.*

Whether the alienation of one spirituall or religious man to another spirituall man, be *Mortmaine* or not. *Quere. Keilway, fo. 111. pl. 37. 21. E. 3. 5. Br. Mortmaine 12. 11. H. 4. 88. Br. Mortmaine 18. 16. Ass. pl. 1. Br. Mortmaine 19.*

Whether a Lord that is disseised at the time of the alienation in *Mortmaine*, shall have a yeare after his entry, for to enter for *Mortmaine*, or not. *Quere. Keilway, fo. 111. pl. 83.*

Mis Non

Non eſt factum.

TWo are bound in an Obligation, and the Seale of one of them is broken off, in an action brought againſt the other; whether he may pleade *Non eſt factum*, or not. *Quære.* 3. *H.* 7. 15. *Br. Non eſt factum* 21. See my *Reports*, *pa.* 125. *pl.* 205.

Obligation.

A Man was bound to *I. N.* that he ſhould not uſe his Art in *D.* by two yeares, and by *Hull* this Obligation is againſt Law. *Quære* of this, becauſe that the reſtriction goes only to *D.* which is not a totall reſtriction. 2. *H.* 5. 5. *Br. Faits* 93. and *Obligation* 85. See the 8. *Rep. fo.* 125. *b.* and the 11. *Rep. fo.* 53. *b.* and ſee my *Reports*, *pa.* 77. *pl.* 121. *pa.* 191. *pl.* 238.

Two are bound in a Bond, and the Seale of one is broken off, whether this

this shall avoid the whole deed, so that in an action brought against the other, he may pleade *non est factum*, or not. *Quere.* 3. *H.* 7. 15. Br. *Non est factum*, 21. See my Reports *pa.* 125. *pl.* 205.

A man is bound to a Baron and Feme, the Baron makes the wife Executrix and dies, whether the wife may bring an action as Executrix to the Baron, or whether she ought to bring it, *Nomine proprio*, as Survivor, or not. *Quere.* 4. *H.* 6. 5. Br. *Obligation* 35.

Occupans & Occupanti Conceditur.

A Lease is made to one, his Executors and assignes *pur auter vie*, the Lessee makes a Lease for yeares, rendring Rent to him, his Executors and Assignes, and dies. *Quere.* Whether the Lessee for yeares shall be an Occupant, and the Rent extinct; or whether that the Freehold shall re-

vert to the first Lessor, and the terme be in *esse* 15. and 16. of the Queene *Dyer, fo.* 328. *pl.* 10. and see 38. *H.* 6. 4. And *Quære* in this case whether the Executor shall be a speciall Occupant, or not.

Outlawry.

IN Debt brought against an Executor, he pleads *Outlawry* in the Testator, whether this be a good plea or not. *Quære.* 8. E. 4. 6. Br. *Utlagory*, 49. 3. *H.* 6. 17. and 32. 32. *H.* 6. 27.

Parcell and not Parcell.

WHether a hundred may be parcell of a Manour or not. *Quære.* 27. *H.* 6. 2. Br. *Parcel, &c.* 20. and Br. *Scire facias*, 7. *Keilway, fo.* 151. *pl.* 51.

Whether an Annuity may be parcell of a Priory or not. *Quære.* 22. E. 4. 44. Br. *Parcell, &c.* 26.

Possibility.

Possibility.

A. By Indenture infeoffes *B.* of black acre, to the use of *A.* for life, the remainder in taile to *C.* the remainder in fee to *D.* with a proviso, if *E.* dies without issue, that *A.* at any time by Indenture sealed, &c. in presence of foure witnesses, may alter, &c any use, &c. *A.* by Indenture renounces Surrenders, Releases, &c to *B. C.* and *D.* the said Power, Condition, Authority, &c. *E.* dies without Issue, *A.* by Indenture in presence of 4. Revokes the first uses, and limits new, whether this release of a future possibility, or power of revocation shall barre it or not. *Quere.* 1. *Rep. Albanies Case. Cooke* upon *Littleton*, *fo.* 265. *b.*

Presentments to Churches.

A Presentment is divolved to a Bishop by Laps, who is deprived, whether the Metropolitan or the King shall present. *Quare.* 7. E. 6. *Dyer, fo.* 87. *pl.* 103.

Prohibition.

A Man devises that his Executors shall sell his Land, and of the Monies shall give such portions to his Daughters, the Legatees sue in Court Christian for their portions, whether a Prohibition lyes or not. *Quare.* 4. and 5. *P.* and *M. Dyer, fo.* 151. *pl.* 5. *Trin.* 9. of the Queene *Dyer, fo.* 264. *pl.* 41. See *Hobarts Reports, pa.* 371. *pl.* 343.

Ration-

Rationabile parte bonorum.

WHether it be *Communis lex Angliæ*, for women and Infants to have their reaſonable part of the Goods of the Defuncte or not. *Quære.* See *Br. Rationabile parte bonorum per totum*, and ſee *F. N. B.* the Writ of *Rationabile parte bonorum.*

Recognizance

WHether the Commons Houſe of Parliament may take a Recognizance or not. *Quære.* 1. *H.* 7. 20. *Br. Recognizance* 8.

Record, and matter of that.

A Man brought Debt upon a Recovery in a Court Baron, whether the Defendant may pleade *Nul tiel Record*, or whether he ought to ſay, *Nul tiel Recovery* ot not. *Quære.* 34. *H.* 6.

H. 6. 49. *Br. Court Baron, &c.* 1. 34. *H.* 6. 42. *Br. Court Baron* 14. 9. *E.* 4. 14. *Br. Court Baron* 16. 28. *Asse pl.* 14. *Br. Record, &c.* 66. *F. N. B. fo.* 71. *Br. Record &c.* 70. See my Reports, *pag.* 15. *pl.* 35.

Relation.

THe Father is disseised, the Sonne makes a Release, and delivers it as an Escroule, to be delivered over to the Disseisor at the death of the Father, the Father dies, the Deed is bayled to the Disseisor; whether this second Delivery shall relate to the first, and so avoid the Deed or not. *Quære.* 35. *H.* 8. *Dyer, fo.* 57. *pl.* 23. See the 3. *Rep. fo.* 35. *b.* See *Title Countermand* 1.

Releases.

Releaſes.

WHether a Releaſe of a right upon a condition ſubſequent be good or not. *Quære.* See Title Conditions.

Whether a Releaſe of all Actions reall, be a good Barre in an Annuity or not. *Quære.* *Cooke* upon *Littleton*, *fo.* 374. *b.* *Dyer*, *fo.* 140. *pl.* 40. 19. *H.* 6. 37. 2. *H.* 4. 13. Br. *Annuity*, 13. & 43. *L.* 5. *E.* 4. 40. Br. *Annuity* 34. 21. *E.* 4. 83. Br. *Annuity* 39. 11. *H.* 7. 20. Br. *Annuity* 54. *Cooke* upon *Littleton*, *fo.* 2. *a.* and 285. *a.*

Feme Diſſeiſoreſſe takes husband, the Diſſeiſee releaſes to the Baron and his Heires, whether this ſhall inure to him or to his wife, or not. *Quære.* 14. *H.* 8. 4. 21. *H.* 6. 41. *Keilway*, *fo.* 129. *a.*

A. By Indenture infeoffes B. of black Acre, to the uſe of *A.* for life,

life, the remainder in taile to *C.* the remainder in Fee to *D.* with a proviſo, if *E.* dies without Iſſue, that *A.* at any time by Indenture ſealed, &c. in preſence of foure Witneſſes, may alter, &c. any uſe &c. *A.* by Indenture renounces Surrenders, Releaſes, &c. to B. *C.* and *D.* the ſaid power, condition, authority, &c. *E.* dies without Iſſue, *A.* by Indenture in preſence of foure Witneſſes, revokes the firſt uſes, and limits new, whether this releaſe of a future poſsibility, or power of revocation, ſhall barre it or not *Quere.* 1. *Rep. Albaines Caſe. Cooke* upon *Littleton, fo.* 265. *b.*

Two men are bound joyntly and ſeverally to a third, who ſues the Bond againſt both, and after appearance enters a Retraxit againſt one of them, whether this ſhall amount to a Releaſe, ſo that it ſhall diſcharge the other or not. *Quere.* See my Reports *pa.* 95. *pl.* 165.

Where one Coparcener of a Rent marries the Ter-tenant, and the other releaſes

releaſes to the husband and wife, how it ſhall inure. *Quære. Cooke* upon *Littleton, fo.* 273. *b.*

Where the Feme Meſne and the Tenant entermarry, and the Lord Paramount releaſes to the husband and wife, how it ſhall inure. *Quære. Cooke* upon *Littleton, fo.* 280. *a.*

Remainder.

WHether there may be a Remainder of a Rent *de novo*, or not. *Quære.* See *Title Rents* 2.

Remitter.

TEnant in Taile inſeoffes his Iſſue inheritable to the Taile within age, who at full age makes a Leaſe for yeares, Tenant in Taile dies, whether the Leaſe be avoided by the Remittor or not. *Quære. Cooke* upon *Littleton, fo.* 349. *a.* 33. *H.* 8. *Dyer, fo.* 51. *b.*

Rents.

Rents.

WHether a Rent granted not of cuſtomary Lands, as out of Lands deviſable, Gavelkinde or Borough Engliſh, or the like, ſhall be of the nature of the Land, or not. *Quære.* 22. *Aſſ. pl.* 78. Br. *Cuſtomes* 34. and *Rents* 13. 26. *H.* 8. 4. Br. *Cuſtomes* 1. 21. *H.* 6. 10 and 11. Br. *Cuſtomes* 24. 4. *E.* 3. 32. Br. *Cuſtomes* 58. 14. *H.* 8 7. Br. *Cuſtomes* 65. and Br. *Rents* 6. and 20. 26. *H.* 8. *Dyer. pl.* 1. and *fo.* 140. *pl.* 38. and 153. *pl.* 11. and 192. *pl.* 23. See *Cooke* upon *Lirtleton*, *fo.* 111. *a.* for deviſe of a Rent ſee now the Statute.

Whether there may be a remainder of a Rent *de novo*, or not. *Quære.* 7. *H.* 4. 4. Br. *Done & Remainder* 8. 15. *E.* 4. 9. Br. *Done & Remainder*, 54. 8. *H.* 4. 19. Br. *Done & Remainder*, 58. *Pl. Com. fo.* 35. *a. Cooke* upon *Littleton*, *fo.* 298. *a.* 2. *Rep. fol.* 70. 76. and 78. 3. *E.* 3. See *Cooke* upon *Littleton*, before, 14. *H.* 7. 2. Br. *Surrender* 16. And ſee the caſe immediately following. A

A man recovers a Rent by Writ of Entry againſt Tenant in Taile of a Rent which had not being before the Grant made in Taile, whether the Recoveror ſhall have a Fee ſimple or not. *Quære.* 15. E. 4. 6. and 8. See 37. H. 6. 36 and *Pl. Com. fo.* 557. *a.*

Land of *B.* out of which a Rent is iſſuing, is given to another by Act of Parliament; whether the Rent be by this extinguiſhed or not. *Quære.* 21. H. 7. 3. Br. *Parliament* 28.

The Lord receives his Rent upon *Chriſtmas* day before dinner, and dies after dinner, and the Lord holds of the King, whether the King ſhall have the Rents of the Tenants arreare or not. *Quære.* 44. E. 3. 3. Br. *Preſentments to Churches* 4. and Br. *Rents* 2.

A man makes a Leaſe for yeares rendring Rent to himſelfe during the terme, and dies, whether his Heire ſhall have debt for the Rent arreare after, or not. *Quære*, See *Title reſervations.*

Requests.

A. is bound to *B.* to deliver to him two hundred weight of Hops, and *B.* to chuse them out of twenty foure bags, &c. whether *B.* is bound to request *A.* to shew the bags for him to make his Election or not. *Quære.* See my Reports, *pa.* 74. *pl.* 113.

Remitter.

TEnant in Taile infeoffes his Son and Heire inheritable to the Taile, within age at the time of the Feoffement, who at full age makes a Lease for yeares by Deed Indented, or Deed Poll of the Land, and then Tenant in Taile dies, so that he is remitted, whether he shall avoid the Lease or not. *Quære. Cooke* upon *Littleton, fo.* 349. *a.* 33. *H.* 8. *Dyer. fo.* 51. *b.* See *Littleton, Sect.* 289.

A husband discontinues the Land of

of his wife, and goeth beyond Sea and the Diſcontinuee lets the ſame Land to the wife for terme of her life, and delivers ſeiſin to her, and after the husband comes back, and diſagrees to the Leaſe and Livery of Seiſin made to his wife in his abſence; whether this ſhall ouſte the wife of her Remitter, or not. *Quare. Littleton Sect. 677.* See *Cooke* thereupon.

A Husband diſcontinues the Lands of his wife, and the diſcontinuee is diſſeiſed, by the coven and conſent of the husband and wife; and after the Diſſeiſor letteth the ſame Lands to the husband and wife for life, whether in this caſe the wife ſhall be remitted or not. *Quere. Littleton, Sect. 678.* See *Cooke* thereupon, *fo. 357. b.*

Two Joyntenants in Fee, the one of full age, the other within age, are diſſeiſed, and the Diſſeiſor dies ſeiſed, and his Iſſue enters, the Joyntenant of full age dies; whether the Infant ſurviving may enter into the whole or not. *Quare.* See *Littleton, ſect. 696.* and *Cooke* thereupon, *fo. 364. b.*

Reservations.

A Man makes a Lease for yeares, rendring Rent to himself during the terme, and dies; whether his Heire shall have Debt for Rent arreare after, or not. *Quære.* 27. *H.* 8. 19. *Perkins* 697. 698. 699. 22. *H.* 7. *fo.* 88. *b. Keilway*, 5. *Rep. fo.* 111. *a. Mallories Case*, *Pl. Com. fo.* 171. *a.* 21. *H.* 7. 25. 30. *H.* 8. *Dyer*, *fo.* 45. *Cooke* upon *Littleton*, *fo.* 47. *a. q.*

Whether a condition of re entry may be reserved to the Heire, not naming the Ancestor, or not. *Quære.* for I doubt of it, upon the words of *Littleton*, *sect.* 346. and 343. See *Cooke* thereupon, *fo.* 213. and 214.

Retorne of Beasts.

A Man distreines by two Horses, the one worth 10*l.* and the other 40*s.* and he avowes the one for one Rent

Rent day, and the other for another, not making mention which for the one, nor which for the other, and the one is found for him, the other againſt him. *Quere.* of which horſe he ſhall have returne. 2. *H.* 6. *fo.* 3. See 2. *H.* 6. 17. *Br. Returne & avers* 1.

Revocation.

THe King preſents his Clerke to a Benefice, and before inſtitution preſents another, whether this be a revocation of the former preſentation, or not. *Quere.* See my *Rep. pa.* 86.

Seiſin.

A Man who hath a Rent grants it over upon condition, the condition is broken: whether the Grantor ſhall have an Aſsize for the Rent after arreare, without a new Seiſin, or not. *Quere. M.* 15. E. 3. Br. *Title Aſsize* 407. *Cooke* upon *Littleton, fo.* 202. *b.* 15. *Aſſ.* 12.

A man hath iſſue a Sonne and a Daughter by one venter, and a Sonne by another venter, and makes a Leaſe for life rendring Rent, and dies; whether the receit of the Rent ſhall be a ſufficient Seiſin to make a *poſſeſſio fratris*, ſo that the Daughter ſhall inherit, or not. *Quære.* 35. *Aſſ. Pl.* 2. *Cooke* upon *Littleton*, *fo.* 15. *a.* 14. E. 2. *Br. Seiſin* 43.

A man dies ſeized of ſeverall acres of Land in one County, his Heire enters generally in one of the Acres, whether this gives poſſeſſion of the other Acres or not. *Quære*, 21. *H.* 7. 33. *a. Cooke* upon *Littleton*, *fo.* 15. *a. b.* See 39. *Aſſ. pl.* 16.

Statute.

WHether a Baron of the Realme may acknowledge a Statute or not. *Quære.* See 5. E. 4. 103. 8. *R.* 2. *proceſ.* 224. 5. E. 4. 100. *a.* 9. E. 3. *Bro.* 473. 39 E. 3. 35. *b. Dyer*, *fo.* 360. 9. *Rep. fo.* 117. 10. *H.* 4. 15. *D.* 1. *H.* 5. 14. 27. *H.* 8.

H. 8. 22. 14. *H.* 7. 21. 26. *H.* 8. 7. 14. *H.* 6. 2. 27. *H.* 8. 22 35. *H.* 6. 146. *Dyer, fo.* 314. 48. *Aſſ. pl.* 6. 27. *E.* 3. *ca.* 1. *de premunire.* 15. *H.* 7. 9. *b.* 9 *E.* 4 *fo.* 2. 6. *Rep. fo.* 52. 15. *E.* 3. *ca.* 26. 5. *H* 4. *ca.* 8. 3. *H.* 6. *fo.* 48. *per Cockin,* 9 *Rep. fo.* 69. 12 *H.* 7. 25. To the objection, that if a Baron cannot acknowledge a Statute, that it is void if he ſhall anſwer, 'tis not void, for debt lies. 7. *F.* 4. 27. or 24. *F. N. b.* 122. 22. *E.* 4. 22.

Surrender.

A Termor agrees, that his Leſſor ſhall make a Feoffement to a ſtranger, whether this be a ſurrender or not. *Quære.* 21. *H.* 7. 7. Br. *Surrender* 48. 28. *&* 29 *H.* 8. *Dyer, fo.* 33. *pl.* 13. 14, 15, 16. See 40 *E.* 3. 24. Br. *Surrender,* 1. 8. *Aſſ.* Br. *Surrender* 25. 40. *Aſſ. pl.* 16. Br. *Surrender,* 35. See *Dyer, fo* 363. *pl.* 22. *Cooke* upon *Littleton, fo.* 48 *b.*

The King Leaſes a Meſſuage for yeares rendring Rent, the Leſſee af-

ter takes a patent of the office of the custody of the said messuage; whether the terme be surrendered or not. *Quere. Pasch.* 3. of the Queene *Dyer, fo.* 200. *pl.* 62.

Taile.

GRandfather, Father, and Sonne, Lands are given to the Grandfather and to his Heires begotten by the Father, the Father dieth, the Grandfather dieth, whether the Son be in as Heire to the Grandfather begotten upon the body of his Father; and whether the wife of the Grandfather in that case shall be endowed or not. *Quere.* 12. *H.* 4. 2. *per Horton. Cooke* upon *Littleton, fo.* 20. *b.*

Lands are given to a man aud his wife, and to one Heire of their bodies lawfully begotten, and to one Heire of the bodie of that Heire only; whether this be an Estate Taile or not. *Quere.* for I doubt of it. 39. *Ass. pl.* 20. 20. *H.* 6. 35. 5. *H.* 4. 7. *b.*, 14. *H.*

14. H. 4. 15. *Littleton, sect.* 13. and *Cooke* thereupon, *fo.* 19. *a.* and *fo.* 20. *a. b.* and *fo.* 22. *a.*

A man gives Land to another, & *hæredi masculo de corpore suo*, what Estate this is. *Quære. Fide Registrum judiciale, fo.* 6.

A man devises Land to a man, and to the Heires Males of his body, who hath Issue a Daughter, who hath Issue a Son, whether this Son be inheritable by force of this Devise, or not. *Quære.* See *Littleton, sect.* 719. 1. H. 6. 2. 11. H. 6. 13. 14. 28. H. 6. *Title Devise* 18. *Statham. Pl. Com. fo.* 414. *b.* 20. H. 6. 43. 37. H. 8. *Br. Title Done & Remainder* 61. *Title Nosme*, 1. & 40. *Perkins* 506. *Cooke* upon *Littleton, fo.* 25. *a. b.*

Lands are devised to one for life, the remainder to the next Heire Male of B. in taile, *b.* hath Issue two Daughters, and each of them hath Issue a Son, and the Father and Daughters die; whether the remainder be void for the incertainty, whether the eldest

shall take it because he is worthiest or whether both of them shall take, for that they both make but one Heire. *Quere*, 11. *H.* 6. 13. 9. *H.* 6. 25. *Cooke* upon *Littleton*, *fo.* 25. *b.*

Land is given to the Son, and to the Heires of the body of his Father (then dead) ingendered, this is a good Taile in him, but whether his younger brother shall inherit by force of this gift, or not. *Quare*. *M.* 4. *&* 5. *P. & M. Dyer*, *fo.* 156, *pl.* 24. 25. *Cooke* upon *Littleton*, *fo.* 26. *b. Hill.* 8. of the Queene *Dyer*, *fo.* 247. *pl.* 76. See 12. *H.* 4. 1. *&* 3. *Br. Taile* 10.

A Rent is granted in Taile, whether the Grantee may make it an Annuity, or not; because he seemes to have an election, *secundum formam doni*, to take it as a Rent Charge, or as an Annuity; and the Statute *De donis conditionalibus ses*, that *Voluntas donatoris in carta sua manifeste expressa de cetero observetur*; and his will is observed by making it an Annuity or a Rent Charge; for he gave him by the Grant such an impli-

implicit power. To this it may be ſaid, That if he might at his Election make it an Annuity, then it were no more an Intaile, but a Fee conditionall as at Common Law, and then after Iſſue had, he may alien, and barre the Iſſue, which ſeemeth contrary to the will of the Donor, *ideo Quere.*

Tenant in Taile makes a Leaſe for yeares, to commence after his death, rendring Rent, the Iſſue accepts the Rent; whether this ſhall barre his Entry or not. *Quere. Dyer, fo.* 279. *a. pl.* 7. *fo.* 69. *a. pl.* 30. *fo.* 246. *a. pl.* 69. *Cooke upon Littleton, fo.* 44. *a. Pl. Com. fo.* 430.

Tenant in Taile makes a Leaſe for yeares, rendring 20 *s.* Rent, and after releaſes 19 *s.* and dies, and the Iſſue accepts 12 *d.* whether he may diſtraine for the 19 *s.* more, or not. *Quere.* 13. & 14. of the Queene *Dyer, f.* 304. *pl.* 53.

Tenant

Tenant at will and sufferance.

TEnant at will is ousted, and the Lessor disseised, whether by this the Lease at will be determined or not. *Quære.* 38. *H.* 6. 27. *Br. Tenant pro copie, &c.* 6. 11. *E.* 4. 3. *Br. Tenant pro copie, &c.* 11.

Whether Tenant at will may determine his will, a day or two before the Feast, in which he ought to pay his Rent, and thereby be excused of the payment of it, or not. *Quære.* 20. *H.* 7. *fo.* 65. *pl.* 6. *Keilway.* See *Cooke* upon *Littleton, fo.* 55. *b. letter. c.*

Whether a bargainee before Inrollment, or Entry, shall be a Tenant at will, or not. *Quære* See my *Reports, pa.* 62. *pl.* 97. *& pa.* 69. *pl.* 108. See *Littleton, sect.* 70.

Tenures.

TEnant by Knight ſervice makes a gift in Taile, reſerving Fealty and Rent; whether the Donee in Taile ſhall hold by Knight Service, and the other Services eſpecially reſerved, or in Socage onely. *Quære. Cooke* upon *Littleton, fo.* 23. *a.* 33. *H.* 8. *Dyer, fo.* 52. *pl.* 3. See *Dyer, fo.* 45. *pl.* 1.

Teſtaments.

WHether a Feme Covert may make a Teſtament without agreement of her husband, of things in action, as Obligations, and the like, due to her before the Coverture, or not. *Quære.* 4. *H.* 6. 31. *Br. Teſtament, &c.* 9. 39. *H.* 6. 27. *Br. Teſtament* 10. 12. *H.* 7. 22. 23. 24. *Br. Teſtament* 11. 18. *E* 4. 11. *Br. Teſtament* 13. 3. *E.* 2. *Br. Teſtament* 21. See 4. *Rep. fo.* 61. *a.* 5. *Rep. fo.* 10. *Dyer, fo.* 354. *b. pl.* 34.

Time.

Time.

WHether a Gardian of a Prison shall forfeit his Office for an escape in the night, or not. *Quære.* 5. E. 4. 26. *br. Forfeiture, &c.* 54.

Tryall.

A Man is mortally wounded in *France*, and dieth thereof in *England*, whether an Appeale in this case (for it is not punishable by the Common Law) doth lye upon the Statute of 1. *H.* 4. *cap* 14 or not. *Quære. Cooke* upon *Littleton, fo.* 74. *a. b.*

An Earle or Lord of *Ireland* commits Treason in *Ireland* by open Rebellion whether he may be arraigned and put to his Tryall in *England* for the offence by the Statute of 26. *H.* 8. *cap.* 13. 32. *H.* 8. *cap.* 4. 35. *H.* 8. 2. or 5. *E.* 6. 11. or not. *Quære.* 19. and 20. of the Queene *Dier, fo.* 360. *pl.* 6. *Cooke* upon

upon *Littleton*, *fo.* 261. *b.* See the 7. *Rep. fo.* 15. *b.*

Tythes.

A Parſon Leaſes parcell of his glebe Land for yeares, rendring Rent, whether the Leſſee ſhall pay Tythes or not. *Quære.* 30. *H.* 8. *Dyer, fo.* 43. *pl.* 21.

The Inhabitants of a Pariſh have a Chappell of Eaſe, and a Cuſtome that thoſe within ſuch a Precinct ought to finde a Rope for the third Bell, and to repaire part of the Mother Church, in conſideration of which they have been freed from payment of any Tythes to the Mother Church, whether this be a good Cuſtome or not. *Quære.* See my *Reports, pa.* 91. *pl.* 151.

Veſt

Veſt and Deveſt.

A Mannour was given to *S.* by Parliament, and after a Tenant who held of it by Knights Service, died, after *S.* was attainted of Treaſon, and the firſt Act reverſed in all points, the King ſeized the Mannour, and granted it to his mother, whether the Patentee ſhall have the ſaid Ward or not, becauſe it was a thing veſted. *Quere.* 3. *H.* 7. 15. *Br. Parliament* 39. See 4. *H.* 7. 10. *Br. Parliament* 41. *Dyer, fo.* 25. *pl.* 163. See *Keilway, fo.* 125. *pl.* 86. 21. *H.* 6. 56. *Br. Preſentments, &c.* 22.

A Diſſeiſee of a Mannour ſuffers the Diſſeiſor to be in poſſeſſion untill a Ward falls, and after re enters, who ſhall have the Ward. *Quere.* 2. *H.* 7. 2. *Br. Garde* 65. See *Dyer, fo.* 25. *pl.* 163. and the caſes immediatly before.

View.

A *Precipe quod reddat* is brought against two, the one acknowledges the Action, and the other demands the View, whether he shall have it, or not. *Quære.* 14. H. 6. 5. *Br. Dilatories* 9. and *View* 68.

Villeinage and Villeine.

A Freeman marries a Niese, whether this be an Enfranchisement for ever, or for life onely. *Quære.* The Lad marries his Niese, whether this be an Enfranchisement for ever, or no. *Quære.* See *Title Enfranchisement.*

Voucher.

THe Tenant vouches *A.* who is returned dead, upon the Writ of Summons; whether he may now vouch in another Line, or not. *Quære.*

41. E.

41. E. 3. 28. Br. Counterplea de Voucher 56. and Br. Voucher 18. 43. E. 3. 3. Br. Voucher 21.

Use and Uses.

A Man in consideration of marriage, covenants, That immediately after his death, his Land shall inure and remaine to his Sonne, whether this raises a use immediately to the Sonne, or not. *Quære.* 34. and 35. *H.* 8. *Dyer, fo.* 55. *pl.* 3. and 4. *Mich.* 1. *M. Dyer, fo.* 96. *pl.* 41. *Dyer, fo.* 162. *pl.* 48. and 49. *fo.* 235. *pl.* 20, 21. *fo.* 166. *pl.* 8. and 9. *fo.* 325. *pl.* 37. and *fo.* 190. *pl.* 18.

Wager of Law.

A Man brings Debt upon a Recovery in ancient Demesne, which is a Court Baron; whether the Defendant may wage his Law, or not. *Quære.* 34. *H.* 6. 49. *Br. Court Baron, &c.* 1. *Leygager* 11. and *Record, &c.* 8. 11. *H.* 7. 25. *Br. Leygager* 105. See my *Reports, pa.* 15. *pl.* 35.

By

By the Cuſtome of *London* a man cannot wage his Law for bourding, but whether in an Action brought at *Weſtminſter* he ſhall have his Law, or not. *Quere* See *Title Cuſtomes* 1.

Warde.

A Man of *non ſane memory* makes a Feoffement and dies, his Heire recovers by a *Dum non fuit compos mentis*, whether he ſhall be in Warde or not. *Quere.* 7. *H.* 4. 12. *Br. Garde* 24.

Diſſeiſee of a Mannour ſuffers the Diſſeiſor to continue poſſeſsion till a Warde fals, and after re enters; who ſhall have the Warde. *Quere.* 2. *H.* 7. 2. *Br. Garde*, 65. See *Keilway*, *fo.* 111 *pl.* 83.

A Mannour was given to *S.* by Parliament, and after a Tenant which held of it by Knights Service died, after *S.* was attainted of Treaſon and the Act reverſed by Parliament in all points, the King ſeized the Mannour,

and granted it to his mother; whether the Patentee ſhall have the Ward, or not. *Quære.* 3. *H.* 7. 15. *Br. Parliament*, 39. See 4. *H.* 7. 10. *Br. Parliament* 41. See *Litt. Veſt & Deveſt.*

Tenant in Socage deviſes by his will, the cuſtody of his Heire apparent within age to B. whether this ſhall barre the Gardian in Socage, or not. *Quære. Keilway, fo.* 186. *pl.* 1.

A man ſeized in Fee before the Statute of 27. *H.* 8. infeoffes B. in Fee, to the uſe of him and his wife, and the Heires of their two bodies ingendered, and for default of ſuch Iſſue, to the uſe of the Feoffer and his Heires in Fee, after the Statute they have Iſſue, the husband dies, the Iſſue within age; whether he ſhall be in Ward during the life of his mother, or not. *Quære.* 3. & 4. *P. & M. Dyer, fo.* 13. *pl.* 6. See 28 *H.* 8. *Dyer, fo.* 7. *pl.* 11.

Warranty.

WHether a man may grant a Rent *de novo* out of Land for life, or &c. with warranty, becauſe there can be no Title precedent to the Rent. *Quære.* 2 *H.* 4. 13. 30. *H.* 8. *Dyer, fo.* 42. *Temps. E.* 1. *Admeaſurement* 16. 32. *E.* 1. *Voucher*, 294. 30 *E.* 1. *Exchange* 16. 9. *E.* 4. 15. *E.* 4. 9. 29. *Aſſ.* 13.

A man infeoffes another of an Acre of Land with Warranty, and dieth ſeized of another Acre, having Iſſue a Sonne and a Daughter by one venter, and a Sonne by another, the eldeſt Sonne entreth and dieth, the Land diſcends to the Siſter; In this caſe the Warranty diſcendeth on the Sonne, and he may be vouched as Heire, and the Siſter as Heire of the Land; in which caſe the Sonne and Heire by the Common Law having nothing by diſcent, the whole loſſe of the recovery in value lieth upon the Heire of the Land, albeit he be no

Heire to the Warranty. Then put the case that there is a Warranty Paramount, who shall deraigne that Warranty? and to whom shall the recompence in value go? *Quære. Cooke* upon *Littleton, fo.* 376. *b. Pl. Com. fo.* 515.

Land was devised to the Father for life, the remainder to the next Heire Male of the Father, and to the Heires Males of his body, the Devisor dies, the Father infeoffed *B.* with Warranty; by the Feoffement the contingent remainder is destroyed, but whether the Warranty shall binde the remainder, or not. *Quære.* 1. *Rep. Archers Case.*

A Servant sels Clothes, and warrants them; whether deceit lies against him, or not. *Quære.* The sale being the sale of the Master, and the warrant the warrant of the Servant. 11. *H.* 4. 6. Br. *Deceit,* 29. and *Garranty* 61.

A man knowing a thing to be corrupt and naught, sels it, whether Deceit

Deceit lies againſt him for the knowledge, without Warranty, or not. *Quære.* 20. *H.* 6. 34. Br. *Deceit*, 2. 9. *H.* 6. 53. Br. *Garranty* 93.

Waſte.

IF a man fix a Furnace or Fats *in medio domus*, and not to the wals, or a poſt in the Land not to the wals, he may take it away within the Terme; bu if he ſuffer it till the Terme be ended, the Leſſor ſhall have it; and the taking of them by the Termer within his Terme is not waſte, for thehouſe is not impaired by it, by *Kings Mile Juſtice*, and *Grevil* Serjeant, *quod nullus negavit. Tamen Quære.* 21. *H.* 7. 26. Br. *Chattels, &c.* 7. See Br. *Chattels, &c.* 11.

Tenant for yeares commits waſt, and after ſurrenders to him in the reverſion, who accepts it, excepting the waſte, whether an Action of waſte lies, or not. *Quære.* 19. *H.* 6. 66. Br.

66. *Br. Waſte* 86. 14. *H.* 8. 10, 11. *Waſte* 95. 23. *H.* 8. *Br. Waſte* 138. *H.* 6. 14. *pl.* 48. See *Cooke* upon *Littleton, fo.* 285. *a.*

A man makes a Leaſe for life of a Houſe and Land, which Houſe was ruinous at the time of the Demiſe made, the Leſſee cuts downe Trees to repaire it, whether this be a juſtifiable waſte, or not. *Quære.* 12. *H.* 8. 1. 29. *H.* 8. *Dyer, fo.* 36. *a. Cooke* upon *Littleton, fo.* 53. *a. letter, g.* and *fo.* 55. *b. letter, a.*

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FINIS.

Da. W. C. F.
1/13/09

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